

**U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:05-cv-02898-MHP**

Naigow v. Intel Corporation
Assigned to: Hon. Marilyn H. Patel
Cause: 15:1 Antitrust Litigation

Date Filed: 07/15/2005
Jury Demand: Plaintiff
Nature of Suit: 410 Anti-Trust
Jurisdiction: Federal Question

Plaintiff

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*individually and on behalf of all others
similarly situated*

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V.

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Date Filed	#	Docket Text
07/15/2005	1	CLASS ACTION COMPLAINT; Jury Trial Demanded against Intel Corporation (Filing fee \$ 250.00, receipt number 3374511.). Filed by Peter Jon Naigow. (gba, COURT STAFF) (Filed on 7/15/2005) Additional attachment(s) added on 8/2/2005 (gba, COURT STAFF). (Entered: 07/20/2005)
07/15/2005	2	ADR SCHEDULING ORDER: Case Management Statement due by 11/14/2005. Case Management Conference set for 11/18/2005 01:30 PM. (Attachments: # 1 Standing Order CMC# 2 Standing Order #2)(gba, COURT STAFF) (Filed on 7/15/2005) (Entered: 07/20/2005)
07/15/2005	3	NOTICE of Pendency of other Action or Proceeding by Peter Jon Naigow (gba, COURT STAFF) (Filed on 7/15/2005) (Entered: 07/20/2005)
07/15/2005		Summons Issued as to Intel Corporation. (gba, COURT STAFF) (Filed on 7/15/2005) (Entered: 07/20/2005)
07/15/2005		CASE DESIGNATED for Electronic Filing. (gba, COURT STAFF) (Filed on 7/15/2005) (Entered: 07/20/2005)
07/22/2005	4	AFFIDAVIT of Service for Complaint, Summons, Cover Sheet, Notice of Related Case, ECF Regis, ADR, Mag. Jdx and CMC Order served on Intel Corporation (Jerome Jones, C.T. Corporation System, as agent) on July 18, 2005, filed by Peter Jon Naigow. (Keller, Jeffrey) (Filed on 7/22/2005) (Entered: 07/22/2005)
07/27/2005	5	ORDER RELATING CASES C 05-3028, C 05-2699, C 05-2700, C 05-2720, C 05-2721, C 05-2743, 05-2758, C 05-2813, C 05-2818, C 05-2823, C 05-2830, C 05-2831, C 05-2834, C 05-2858, C 05-2859, C05-2882, C 05-2897, C 05-2898, C 05-2916, and C 05-2957 to C 05-2669 MHP; Case reassigned to Judge Marilyn H. Patel for all further proceedings; Signed by Judge Marilyn Hall Patel on 7/27/2005. (awb, COURT-STAFF) (Filed on 7/27/2005) (Entered: 07/27/2005)
07/28/2005	6	NOTICE of Appearance by Joy K. Fuyuno (Fuyuno, Joy) (Filed on 7/28/2005) (Entered: 07/28/2005)
07/29/2005	7	STIPULATION re 1 Complaint And Proposed Order To Continue Filing Date by Intel Corporation. (Attachments: # 1 Signature Page (Declarations/Stipulations))(Hockett, Christopher) (Filed on 7/29/2005) (Entered: 07/29/2005)
08/03/2005	8	STIPULATION AND ORDER extending deadline for defendant to file responsive pleading; Signed by Judge Marilyn Hall Patel on 8/2/2005. (awb, COURT-STAFF) (Filed on 8/3/2005) (Entered: 08/03/2005)
08/26/2005	9	Statement of Facts <i>DEFENDANT INTEL CORPORATION'S FED. R. CIV. PROC. 7.1 AND CIVIL L.R. 3-16 DISCLOSURE STATEMENTS</i> filed by Intel Corporation. (Hockett, Christopher) (Filed on 8/26/2005) (Entered: 08/26/2005)
10/28/2005	10	Proposed Order to Stay Deadlines Pending MDL Decision by Peter Jon Naigow. (Keller, Jeffrey) (Filed on 10/28/2005) (Entered: 10/28/2005)

11/01/2005	<u>11</u>	ORDER STAYING CASE pending MDL determination, Signed by Judge Marilyn Hall Patel on 10/31/2005. (awb, COURT-STAFF) (Filed on 11/1/2005) (Entered: 11/01/2005)
11/17/2005	<u>12</u>	Letter from Joy K. Fuyuno re MDL Transfer Order of November 8, 2005. (Attachments: # <u>1</u> MDL Transfer Order)(Fuyuno, Joy) (Filed on 11/17/2005) (Entered: 11/17/2005)
01/05/2006	<u>13</u>	ORDER STATISTICALLY DISMISSING CASE pending MDL determination; Signed by Judge Marilyn Hall Patel on 1/5/2006. (awb, COURT-STAFF) (Filed on 1/5/2006) (Entered: 01/05/2006)
01/10/2006	<u>14</u>	ORDER of Transfer by the Judicial Panel on Multidistrict Litigation to transfer case to USDC for the District of Delaware (In Re Intel Corporation, Inc., Antitrust Litigation - MDL - 1717). (gba, COURT STAFF) (Filed on 1/10/2006) (Entered: 01/11/2006)
01/11/2006	<u>15</u>	Certified copy of transfer order, docket sheet along with the original case file sent to USDC for the District of Delaware (MDL - 1717). (gba, COURT STAFF) (Filed on 1/11/2006) (Entered: 01/11/2006)

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PETER JON NAIGOW, individually and on)
behalf of all others similarly situated,)

Plaintiff,)

v.)

INTEL CORPORATION, a Delaware)
corporation,)

Defendant.)

No.

CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Peter Jon Naigow, by his undersigned attorneys, brings this civil action for damages and injunctive relief on behalf of himself and all others similarly situated against the above-named Defendant, and demanding a trial by jury, complains and alleges as follows:

I. NATURE OF THE ACTION

1. Intel holds a monopoly in a market critical to our economy: microprocessors that run the Microsoft Windows and Linux families of operating systems (hereinafter the “x86 Microprocessor Market”). Intel possesses unmistakable and undeniable market power, its microprocessor revenues accounting for approximately 90% of the worldwide total (and 80% of the units).

2. For over a decade Intel has unlawfully maintained its monopoly by engaging in a relentless, worldwide campaign to coerce customers to refrain from dealing with AMD. Among other things,

- Intel has forced major customers into exclusive or near-exclusive deals;
- it has conditioned rebates, allowances and market development funding on customers’ agreement to severely limit or forego entirely purchases from its major competitor Advanced Micro Devices, Inc. (“AMD”);
- it has established a system of discriminatory, retroactive, first-dollar rebates triggered by purchases at such high levels as to have the practical and intended effect of denying customers the freedom to purchase any significant volume of processors from AMD;
- it has threatened retaliation against customers introducing AMD computer platforms, particularly in strategic market segments;
- it has established and enforced quotas among key retailers effectively requiring them to stock overwhelmingly, if not exclusively, Intel-powered computers, thereby artificially limiting consumer choice;
- it has forced PC makers and technology partners to boycott AMD product launches and promotions;

• and it has abused its market power by forcing on the industry technical standards and products which have as their central purpose the handicapping of AMD in the marketplace.

3. Intel's economic coercion of customers extends to all levels – from large computer-makers like Hewlett-Packard and IBM to small system-builders to wholesale distributors to retailers such as Circuit City. All face the same choice: accept conditions that exclude AMD or suffer discriminatory pricing and competitively crippling treatment. In this way, Intel has avoided competition on the merits and deprived AMD of the opportunity to stake its prices and quality against Intel's for every potential microprocessor sale.

4. Intel's conduct has become increasingly egregious over the past several years as AMD has achieved technological leadership in critical aspects of microprocessor architecture. In April 2003, AMD introduced its Opteron microprocessor, the first microprocessor to take x86 computing from 32 bits to 64 bits – an advance that allows computer applications to address exponentially more memory, thereby increasing performance and enabling features not possible with just 32 bits. Unlike Intel's 64-bit architecture of the time (Itanium), the AMD Opteron – as well as its subsequently-introduced desktop cousin, the AMD Athlon64 – offers backward compatibility, allowing PC users to continue using 32-bit software as, over time, they upgrade their hardware. Bested in a technology duel over which it long claimed leadership, Intel increased exploitation of its market power to pressure customers to refrain from migrating to AMD's superior, lower-cost microprocessors.

5. Intel's conduct has unfairly and artificially capped AMD's market share, and constrained it from expanding to reach the minimum efficient levels of scale necessary to compete with Intel as a predominant supplier to major customers. As a result, computer manufacturers continue to buy most of their requirements from Intel, continue to pay monopoly prices, continue to be exposed to Intel's economic coercion, and continue to submit to artificial limits Intel places on their purchases from AMD. With AMD's opportunity to compete thus constrained, the cycle continues, and Intel's monopoly profits continue to flow.

6. Consumers ultimately foot this bill, in the form of inflated PC prices and the loss of freedom to purchase computer products that best fit their needs. Society is worse off for lack of

innovation that only a truly competitive market can drive. The Japanese Government recognized these competitive harms when on March 8, 2005, its Fair Trade Commission (the “JFTC”) recommended that Intel be sanctioned for its exclusionary misconduct directed at AMD. Intel chose not to contest the charges.

7. In this proposed class action, Plaintiff, on behalf of a class of purchasers of Intel microprocessors, seeks injunctive relief and compensatory damages arising from Intel’s restraint of trade and unfair business practices.

II. JURISDICTION AND VENUE

8. The Court has subject matter jurisdiction under 28 U.S.C. § 1337 (commerce and antitrust regulation) and 28 U.S.C. § 1331 (federal question), as this action arises under Section 2 of the Sherman Act, 15 U.S.C. § 2, and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15(a) and 26. The Court has supplemental subject matter jurisdiction of the pendent state law claims under 28 U.S.C. § 1367.

9. Venue is proper because Intel Corporation resides and is found in this district within the contemplation of 28 U.S.C. § 1391 (b) and (c) and as provided in Sections 4 and 12 of the Clayton Act, 15 U.S.C. §§ 15 and 22.

III. THE PARTIES

10. Plaintiff Peter Jon Naigow is a resident of Brown Deer, Milwaukee County, Wisconsin, who purchased a computer with an Intel microprocessor and was injured as a result of Defendant’s illegal conduct.

11. Defendant INTEL CORPORATION is a Delaware corporation with its principal executive offices at Santa Clara, California, and it conducts business both directly and through wholly-owned and dominated subsidiaries worldwide. Intel and its subsidiaries design, produce, and sell a wide variety of microprocessors, flash memory devices, and silicon-based products for use in the computer and communications industries worldwide.

IV. CLASS ACTION ALLEGATIONS

12. Plaintiff brings this suit as a class action pursuant to Rules 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of herself and a Plaintiff Class (“the Class”) composed of and defined as follows:

All persons and entities residing in the United States who from June 29, 2001 through the present, purchased a microprocessor in the United States indirectly from the Defendant. Specifically excluded from this Class are the Defendant; the officers, directors or employees of the Defendant; any entity in which any has a controlling interest; and any affiliate, legal representative, heir or assign of the Defendant. Also excluded are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

13. This action has been brought and may be properly maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure for the following reasons:

a. The Class is ascertainable and there is a well-defined community of interest among the members of the Class;

b. Based upon the nature of the trade and commerce involved and the number of indirect purchasers of Intel-powered computers, Plaintiff believes that the members of the class number in the thousands, and therefore is sufficiently numerous that joinder of all Class members is not practicable;

c. Plaintiff’s claims are typical of the claims of the members of the Class because Plaintiff indirectly purchased an Intel microprocessor from the Defendant or its co-conspirators, and therefore Plaintiff’s claims arise from the same common course of conduct giving rise to the claims of the members of the Class and the relief sought is common to the Class;

d. The following common questions of law or fact, among others, exist as to the members of the Class:

i. whether Defendant formed and operated a combination or conspiracy to fix, raise, maintain or stabilize the prices of, or allocate the market for, microprocessors;

ii. whether the combination or conspiracy caused microprocessor prices to be higher than they would have been in the absence of Defendant’s conduct;

- iii. the operative time period of Defendant's combination or conspiracy;
 - iv. whether Defendant's conduct caused injury to the business or property of Plaintiff and the members of the Class;
 - v. the appropriate measure of the amount of damages suffered by the Class;
 - vi. whether Defendant's conduct violates Section 1 of the Sherman Act;
 - vii. whether Defendant's conduct violates Sections 16720 and 17200 of the California Business and Professions Code;
 - viii. whether Defendant's conduct violates the antitrust, unfair competition, and consumer protection laws of the other states as alleged below; and
- e. These and other questions of law or fact which are common to the members of the Class predominate over any questions affecting only individual members of the Class;
 - f. After determination of the predominate common issues identified above, if necessary or appropriate, the Class can be divided into logical and manageable subclasses;
 - g. Plaintiff will fairly and adequately protect the interests of the Class in that Plaintiff has no interests that are antagonistic to other members of the Class and has retained counsel competent and experienced in the prosecution of class actions and antitrust litigation to represent herself and the Class;
 - h. A class action is superior to other available methods for the fair and efficient adjudication of this litigation since individual joinder of all damaged Class members is impractical. The damages suffered by individual Class members are relatively small, given the expense and burden of individual prosecution of the claims asserted in this litigation. Thus, absent the availability of class action procedures, it would not be feasible for Class members to redress the wrongs done to them. Even if the Class members could afford individual litigation, the court system could not. Further, individual litigation presents the potential for inconsistent or contradictory judgments and would greatly magnify the delay and expense to all parties and to the court system. Therefore, the class action device presents far fewer case management difficulties

and will provide the benefits of unitary adjudication, economy of scale and comprehensive supervision by a single court;

i. Defendant has acted, and refused to act, on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole; and

j. In the absence of a class action, Defendant would be unjustly enriched because it would be able to retain the benefits and fruits of its wrongful conduct.

14. The Claims in this case are also properly certifiable under the laws of the State of California, and of the other individual states identified below in the Claims for Relief.

V. FACTUAL BACKGROUND

A. Early History

15. The brain of every computer is a general-purpose microprocessor, an integrated circuit capable of executing a menu of instructions and performing requested mathematical computations at very high speed. Microprocessors are defined by their instruction set – the repertoire of machine language instructions that a computer can follow. So, too, are computer operating systems – software programs that perform the instructions in the set allowing the computer to perform meaningful tasks. The first generation of microprocessors, which were capable of handling 4 and then later 8 bits of data simultaneously, evolved to provide 16-bit capability (the original DOS processors), then sometime later a 32-bit capability (allowing the use of advanced graphical interfaces such as later versions of Windows), and now 64-bit capability.

16. When IBM defined the original PC standards in the early 1980s, it had available to it a variety of microprocessors, each with its own instruction set – among these were microprocessors developed by Motorola, Zilog, National Semiconductor, Fairchild, Intel and AMD. IBM opted for the Intel architecture, which utilized what became known as the x86 instruction set (after Intel's naming convention for its processors, *i.e.*, 8086, 80186, 80286, 80386), and a compatible operating system offered by Microsoft, known as DOS. Unwilling to be consigned to a single source of supply, however, IBM demanded that Intel contract with another

1 integrated circuit company and license it to manufacture x86 chips as a second source. AMD,
2 which had worked with Intel before in supplying microprocessors, agreed to abandon its own,
3 competing architecture, and it undertook to manufacture x86 chips as a second source of supply.
4 Assured that it would not be dependent upon a monopoly supplier of x86 chips, IBM introduced
5 the PC in August 1981 – and its sales exploded.

6 17. Although an arbitrator later found that “AMD’s sponsorship helped propel Intel
7 from the chorus line of semiconductor companies into instant stardom,” Intel soon set out to
8 torpedo the 1982 AMD-Intel Technology Exchange Agreement (the “Agreement”) by which each
9 would serve as a second source for products developed by the other. For example, Intel was
10 required by the Agreement to send AMD timely updates of its second generation 80286 chip.
11 Instead, in a “deliberate[]” effort “to shackle AMD progress,” Intel sent AMD information
12 “deliberately incomplete, deliberately indecipherable and deliberately unusable by AMD
13 engineers.” The conduct was, in the arbitrator’s words, “inexcusable and unworthy.” And it was
14 not isolated. Intel elsewhere tried to “sabotage” AMD products, engaged in “corporate extortion”
15 and demonstrated a near-malevolent determination “to use all of its economic force and power on a
16 smaller competitor to have its way.”

17 18. In another underhanded effort to stifle AMD’s business, Intel decided in 1984 that,
18 the agreement between the parties notwithstanding, Intel would become the sole-source for the
19 promising 80386 chip. To fully realize its objective, Intel engaged in an elaborate and insidious
20 scheme to mislead AMD (and the public) into erroneously believing that AMD would be a second
21 source, thereby keeping AMD in the Intel “competitive camp” for years. This duplicitous strategy
22 served a broader purpose than simply preventing AMD from competing with Intel. Customers’
23 perception that AMD would continue to serve as Intel’s authorized second source was essential to
24 Intel’s aim of entrenching the x86 family of microprocessors as the industry standard (as it had
25 been essential to IBM’s original introduction of the PC). Intel was well aware that if computer
26 manufacturers knew Intel intended to sole source its 32-bit product, they would be motivated to
27 select alternative products produced by companies offering second sources. Intel could not
28 preserve the appearance that AMD would second source the 386 if it terminated the contract or

otherwise disclosed its actual intent. Thus, Intel stalled negotiations over product exchanges, while at the same time allowing AMD to believe that it could ultimately obtain the 386. This injured competition by deterring and impeding serious competitive challenges to Intel and directly injured AMD by depriving it of the revenues and profits it would have earned from such a challenge.

19. Intel implemented this secret plan for the purpose of acquiring and maintaining an illegal monopoly in the x86 line of microprocessors, which it did by at least 1987. As was its plan, Intel's conduct drained AMD's resources, delayed AMD's ability to reverse-engineer or otherwise develop and manufacture competitive products, and deterred AMD from pursuing relationships with other firms. In so doing, Intel wrongfully secured the benefit of AMD's marketing skills and talent in support of the x86 line of microprocessors and related peripherals and secured the benefit of substantial competitively sensitive AMD information regarding its product development plans. When AMD petitioned to compel arbitration in 1987 for Intel's breach and bad faith, the arbitrator took notice of Intel's anticompetitive design: "In fact, it is no fantasy that Intel wanted to blunt AMD's effectiveness in the microprocessor marketplace, to effectively remove AMD as a competitor."

20. In 1992, after five years of litigation, the arbitrator awarded AMD more than \$10 million plus prejudgment interest and a permanent, nonexclusive and royalty-free license to any Intel intellectual property embodied in AMD's own 386 microprocessor, including the x86 instruction set. Confirmation of the award was upheld by the California Supreme Court two years later. In bringing the litigation to a close, the arbitrator hoped that by his decision, "the competition sure to follow will be beneficial to the parties through an expanded market with appropriate profit margins and to the consumer worldwide through lower prices." Not for the first time, and certainly not for the last, Intel's anticompetitive zeal was woefully underestimated.

B. AMD Moves from Second Source to Innovator

21. Shortly after confirmation of the award, AMD settled its outstanding disputes with Intel in a 1995 agreement which gave AMD a shared interest in the x86 instruction set but required it to develop its own architecture to implement those instructions. The settlement had the

unintended benefit of forcing AMD to reinvent itself. Beginning in the late 1990s, AMD committed its resources to innovating not just to be different, but to deliver solutions of greatest benefit to its customers. Going its own way proved beneficial: AMD's first x86 chip without Intel pin-compatibility, the Athlon microprocessor delivered in 1999, marked the first (but not last) time AMD was to leapfrog Intel technologically and beat it to market with a new generation Windows microprocessor (and break the 1GHz speed barrier to boot).

22. But AMD's biggest breakthrough came four years later when it introduced an extension of x86 architecture that took Windows processors into the realm of 64-bit computing. Unlike Intel, which invested billions in its Itanium microprocessor and a new, uniquely 64-bit proprietary instruction set (which, because it was proprietary, would have been a game-ending development for AMD had it become the industry standard), AMD undertook to supplement the x86 instructions to accommodate 64-bit processing while allowing 32-bit software to be run as well. AMD's efforts culminated when, in April 2003, it brought to market its Opteron microprocessor for servers (the workhorse computers used by businesses to run corporate networks, e-commerce websites and other high-end, computationally-intense applications). Opteron was the industry's first x86 backward compatible 64-bit chip. Six months later, AMD launched the Athlon64, a backward compatible 64-bit microprocessor for desktops and mobile computers.

23. The computing industry hailed AMD's introduction of 64-bit computing as an engineering triumph. Said *Infoworld* in its August 27, 2004, issue,

You just gotta love a Cinderella story. . . . AMD's rapid rise from startup to \$5 billion semiconductor powerhouse is, as Humphrey Bogart's English teacher once said, the stuff of which dreams are made. . . . In the process, AMD has become known as the company that kept Intel honest, the Linux of the semiconductor world. . . . After decades of aping Intel architectures, the AMD64 architecture, rooted in Opteron and Athlon 64 processors, has actually been imitated by Intel in the form of Nocona, Intel's 64-bit version of Xeon. In a stunning reversal of fortune, Intel was forced to build that chip because Opteron was invading a server market that the Intel Itanium was supposed to dominate.

In what represented a paradigm shift in the microprocessor world, Microsoft endorsed AMD's 64-bit instruction set and announced that Windows would support it. As noted by *Infoworld*, Intel

1 then copied AMD's technology for its own 64-bit offerings – an event that poignantly marked
2 AMD's technological emergence. Intel still has yet to catch up.

3 24. AMD has since extended its AMD64 technology to the balance of AMD's
4 microprocessor line-up (which now includes AMD Athlon 64, AMD Athlon 64 FX, Mobile AMD
5 Athlon 64, AMD Sempron, and AMD Turion64 products). Owing also to AMD's pioneering
6 developments in dual-core processors and its introduction of an improved architecture that speeds
7 up microprocessor communications with memory and input/output devices, AMD has seized
8 technological leadership in the microprocessor industry. Its innovation has won for it over 70
9 technology leadership and industry awards and, in April 2005, the achievement of being named
10 "Processor Company of 2005" at, to Intel's embarrassment, an Intel-sponsored industry awards
11 show.

12 25. Tellingly, AMD's market share has not kept pace with its technical leadership.
13 Intel's misconduct is the reason. Intel has unlawfully maintained the monopoly IBM bestowed on
14 it and systematically excluded AMD from any meaningful opportunity to compete for market share
15 by preventing the companies that buy chips and build computers from freely deploying AMD
16 processors; by relegating AMD to the low-end of the market; by preventing AMD from achieving
17 the minimum scale necessary to become a full-fledged, competitive alternative to Intel; and by
18 erecting impediments to AMD's ability to increase its productive capacity for the next generation
19 of AMD's state of the art microprocessors. Intel's exclusionary acts are the subject of the balance
20 of this complaint.

21 22 **VI. THE X86 PROCESSOR INDUSTRY**

23 **A. Competitive Landscape**

24 26. The x86 versions of Windows and Linux, the two operating systems that dominate
25 the business and consumer computer worlds, have spawned a huge installed base of Windows- and
26 Linux-compatible application programs that can only run the x86 instruction set. This has given
27 Intel effective ownership of personal computing. Although other microprocessors are offered for
28 sale, the non-x86 microprocessors are not reasonably interchangeable with x86 microprocessors

1 because none can run the x86 Windows or Linux operating systems or the application software
2 written for them.

3 27. The relevant product market is x86 microprocessors because a putative monopolist
4 in this market would be able to raise the prices of x86 microprocessors above a competitive level
5 without losing so many customers to other microprocessors as to make this increase unprofitable.
6 While existing end-users can theoretically shift to other operating system platforms, high switching
7 costs associated with replacing existing hardware and software make this impractical. Further, the
8 number of new, first-time users who could choose a different operating-system platform is too
9 small to prevent an x86 microprocessor monopolist from imposing a meaningful price increase for
10 a non-transitory period of time. Computer manufacturers would also encounter high switching
11 costs in moving from x86 processors to other architectures, and no major computer maker has ever
12 done it. In short, demand is not cross-elastic between x86 microprocessors and other
13 microprocessors at the competitive level.

14 28. The relevant geographic market for x86 microprocessors is worldwide. Intel and
15 AMD compete globally; PC platform architecture is the same from country to country;
16 microprocessors can be easily and inexpensively shipped around the world, and frequently are; and
17 the potential for arbitrage prevents chipmakers from pricing processors differently in one country
18 than another.

19 29. Intel dominates the worldwide x86 Microprocessor Market. According to published
20 reports, over the past several years it has consistently achieved more than a 90% market share as
21 measured by revenue, while AMD's revenue share has remained at approximately 9%, with all
22 other microprocessor manufacturers relegated to less than 1%. Intel has captured at least 80% of
23 x86 microprocessor unit sales in seven of the last eight years. Since 1999, AMD's worldwide
24 volume share has hovered at 15%, only once penetrating barely the 20% level. The following chart
25 is illustrative:

x86 Worldwide CPU Unit Market Share

	1997	1998	1999	2000	2001	2002	2003	2004
Intel	85.0%	80.3%	82.2%	82.2%	78.7%	83.6%	82.8%	82.5%
AMD	7.3%	11.9%	13.6%	16.7%	20.2%	14.9%	15.5%	15.8%
Others	7.5%	7.9%	4.2%	1.1%	1.1%	1.4%	1.7%	1.7%

30. Intel's x86 family of microprocessors no longer faces any meaningful competition other than from AMD. National Semiconductor acquired Cyrix in 1997 but shuttered it less than two years later. At the beginning of this year only two other x86 chip makers remained, Via Technologies, Inc. and Transmeta Corporation – which together account for less than 2% of the market. Transmeta has since announced its intention to cease selling x86 microprocessors, and Via faces dim prospects of growing its market share to a sustaining level.

31. Intel is shielded from new competition by huge barriers to entry. A chip fabrication plant (“fab”) capable of efficiently mass-producing x86 microprocessors carries a price tag of at least \$2.5 to \$3.0 billion. In addition, any new entrant would need the financial wherewithal to underwrite the billions more in research and development costs to design a competing x86 microprocessor and to overcome almost insurmountable IP and knowledge barriers.

Customers for x86 Microprocessors

32. Annual worldwide consumption of x86 microprocessors currently stands at just over 200 million units per year and is expected to grow by 50% over the remainder of the decade. Relatively few microprocessors are sold for server and workstation applications (8.75 million in 2004), but these command the highest prices. Most x86 microprocessors are used in desktop PCs and mobile PCs, with desktops currently outnumbering mobile by a margin of three to one. Of the total worldwide production of computers powered by x86 microprocessors, 32% are sold to U.S. consumers; U.S. sales of AMD-powered computers account for 29% of AMD's production.

33. The majority of x86 microprocessors are sold to a handful of large OEMs (original equipment manufacturers), highly visible companies recognized throughout the world as the leading computer makers. Regarded by the industry as “Tier One” OEMs over most product

categories are: Hewlett-Packard (“HP”), which now also owns Compaq Computer; Dell, Inc.; IBM, which as of May 1, 2005, sold its PC (but not server) business to Lenovo; Gateway/eMachines; and Fujitsu/Fujitsu Siemens, the latter a Europe-based joint venture. Toshiba, Acer, NEC and Sony are also commonly viewed as Tier One OEMs in the notebook segment of the PC market. HP and Dell are the dominant players, collectively accounting for over 30% of worldwide desktop and mobile sales, and almost 60% of worldwide server sales. Both are U.S.-based companies, as are IBM and Gateway/eMachines; and all but Gateway have U.S. manufacturing operations (as does Sony, which operates a North American production facility in San Diego).

34. Worldwide, the Tier One OEMs collectively account for almost 80% of servers and workstations (specialty high-powered desktops), more than 40% of worldwide desktop PCs, and over 80% of worldwide mobile PCs. According to industry publications, unit market share in 2004 among the Tier One OEMs were as follows:

OEM Market Shares – 2004

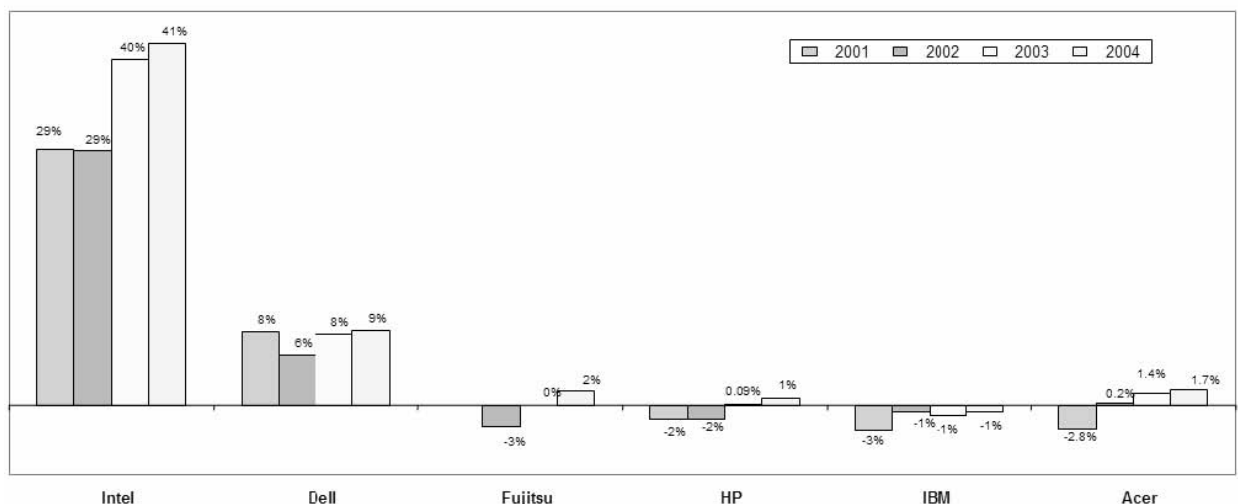
Company	Server/WS	Desktop	Mobile
Hewlett-Packard	29.86%	.69%	.23%
IBM/Lenovo	28.34%	16.18%	17.27%
Fujitsu/Siemens	3.70%	2.83%	6.88%
Acer	0.81%	1.85%	8.53%
Toshiba	0.31%	0.05%	12.73%
NEC	2.06%	2.02%	4.50%
Sony	—	0.76%	4.23%
Gateway/eMachines	0.16%	2.48%	1.45%
Total	79.70%	43.55%	81.02%

35. The balance of x86 production is sold to smaller system builders and to independent distributors. The latter, in turn, sell to smaller OEMs, regional computer assemblers, value-added resellers and other, smaller distributors. Currently, distributors account for over half of AMD’s sales.

36. OEMs have adopted a variety of business models, including sales directly to customers through web-based e-commerce, sales through company-employed sales staffs (who target IT professionals and Fortune 1000 companies) and sales through a network of independent distributors (who focus on smaller business customers). With the exception of Dell, which markets to consumers only directly (mostly over the internet), most OEMs also sell through retail chains. Intel and AMD compete not only to have OEMs incorporate their microprocessors into their retail platforms but also to convince retailers to allocate shelf-space so that the platforms containing their respective microprocessors can be purchased in the retailers' stores.

37. Through its economic muscle and relentless marketing – principally its “*Intel Inside*” and “*Centrino*” programs which financially reward OEMs for branding their PCs as Intel machines – Intel has transformed the OEM world. While once innovative companies themselves, the OEMs have largely become undifferentiated distributors of the Intel platform, offering “*Intel Inside*” and “*Centrino*” computers largely indistinguishable from those of their rivals. As their products have become commoditized, the Tier One OEMs operate on small or negative margins, and, as shown in the following chart, the overwhelming portion of PC profit flows to Intel.

Operating Margins 2001-04 – Intel vs. OEMs



38. This profit drain has left OEMs and others in the distribution chain in a quarter-to-quarter struggle to eke out even a modest return on their assets, thereby making them continually susceptible to Intel's economic coercion, which is described next.

VII. INTEL'S UNLAWFUL PRACTICES

39. Intel has maintained its x86 microprocessor monopoly by deploying a host of financial and other exclusionary business strategies that in effect limit its customers' ability and/or incentive to deal with AMD. Although differing from customer to customer and segment to segment, the Intel arsenal includes direct payments in return for exclusivity and near-exclusivity; discriminatory rebates, discounts and subsidies conditioned on customer "loyalty" that have the practical and intended effect of creating exclusive or near-exclusive dealing arrangements; threats of economic retaliation against those who give, or even contemplate giving, too much of their business to AMD, or who refuse to limit their AMD business to Intel-approved models, brands, lines and/or sectors, or who cooperate too closely with AMD's promotion of its competitive processors; and misuse of industry standards-setting processes so as to disadvantage AMD products in the marketplace.

40. Intel's misconduct is global. It has targeted both U.S. and offshore customers at all levels to prevent AMD from building market share anywhere, with the goal of keeping AMD small and keeping Intel's customers dependent on Intel for very substantial amounts of product. In this way, OEMs remain vulnerable to continual threats of Intel retaliation, AMD remains capacity-constrained, the OEMs remain Intel-dependent, and Intel thereby perpetuates its economic hold over them, allowing it to continue to demand that customers curtail their dealings with AMD. And the cycle repeats itself: by unlawfully exploiting its existing market share, Intel is impeding competitive growth of AMD, thereby laying foundation for the next round of foreclosing actions with the effect that AMD's ability to benefit from its current technological advances is curtailed to the harm of potential customers and consumers.

41. The following is not intended as an exhaustive catalog of Intel's misconduct, or a complete list of its unlawful acts, but only as examples of the types of improper exclusionary practices that Intel has employed.

1 **1. Practices Directed At OEMs**

2 **a. Exclusive and Near-Exclusive Deals**

3 42. **Dell.** In its history, Dell has not purchased a single AMD x86 microprocessor
4 despite acknowledging Intel shortcomings and customer clamor for AMD solutions, principally in
5 the server sector. As Dell's President and CEO, Kevin Rollins, said publicly last February:

6 Whenever one of our partners slips on either the economics or
7 technology, that causes us great concern. . . . For a while, Intel
8 admittedly slipped technologically and AMD had made a step
9 forward. We were seeing that in customer response and requests.

10 43. Nonetheless, Dell has been and remains Intel-exclusive. According to industry
11 reports, Intel has bought Dell's exclusivity with outright payments and favorable discriminatory
12 pricing and service. In discussions about buying from AMD, Dell executives have frankly
13 conceded that they must financially account for Intel retribution in negotiating pricing from AMD.

14 44. **Sony.** With the introduction of its Athlon microprocessor in 1999, AMD began to
15 make notable inroads into Intel's sales to major Japanese OEMs, which export PCs internationally
16 including into the U.S. By the end of 2002, AMD had achieved an overall Japanese unit market
17 share of approximately 22%. To reverse the erosion of its business, in 2003 Intel paid Sony
18 multimillion dollar sums, disguised as discounts and promotional support, in exchange for absolute
19 microprocessor exclusivity. Sony abruptly cancelled an AMD Mobile Athlon notebook model.
20 Soon thereafter, it cancelled plans to release AMD Athlon desktop and notebook computers. As a
21 result, AMD's share of Sony's business dropped from 23% in 2002 to 8% in 2003, and then to 0%,
22 where it remains today. In proceedings brought by the JFTC, Intel has accepted the JFTC charges
23 of misconduct with respect to Sony.

24 45. **Toshiba.** Like Sony, Toshiba was once a significant AMD customer, but also Like
25 Sony, Toshiba received a very substantial payment from Intel in 2001 not to use AMD processors.
26 Toshiba thereupon dropped AMD. Its executives agreed that Intel's financial inducements
27 amounted to "cocaine," but said they were hooked because reengaging with AMD would
28 jeopardize Intel market development funds estimated to be worth \$25-30 million per quarter.
Toshiba made clear to AMD that the tens of millions of dollars of additional marketing support was

provided on the explicit condition that Toshiba could not use AMD microprocessors. In proceedings brought by the JFTC, Intel has accepted the JFTC charges of misconduct with respect to Toshiba.

46. **NEC.** AMD also enjoyed early success with NEC, capturing nearly 40% of its microprocessor purchases for notebooks and desktops in the first quarter of 2002. In May 2002, Intel agreed to pay NEC more than 300 million yen per quarter in exchange for caps on NEC's purchases from AMD. The caps assured Intel at least 90% of NEC's business in Japan, and they established an overall worldwide quota on NEC's AMD dealings. The impact was immediate. While AMD had maintained an 84% share of NEC's Japanese consumer desktop business in the third quarter of 2002, after the payments, AMD's share quickly plummeted to virtually zero in the first quarter of 2003. NEC has made clear to AMD that its Japanese share must stay in the single digits pursuant to NEC's agreement with Intel. Worldwide, AMD's share dipped from nearly 40% to around 15%, where it stands today. In proceedings brought by the JFTC, Intel has accepted the JFTC charges of misconduct with respect to NEC.

47. **Fujitsu.** In the summer of 2002, Fujitsu informed AMD that Intel had pressured Fujitsu to remove Fujitsu's AMD-powered desktop models from Fujitsu's website. Fujitsu complied by making any potential AMD-buyer click past Intel products to get to the AMD offerings. Then, in early 2003, Intel moved to lock up an even greater share of Fujitsu's business. Intel offered an undisclosed package of financial incentives in return for Fujitsu's agreement to restrict its dealings with AMD. Fujitsu's catalog currently limits AMD to a single notebook product. In proceedings brought by the JFTC, Intel has accepted the JFTC charges of misconduct with respect to Fujitsu.

48. **Hitachi.** According to the JFTC, Intel has also purchased an exclusive-dealing arrangement with Hitachi, which had been a substantial AMD customer. The agreement caused AMD's Hitachi business to fall precipitously. For example, during the first part of 2002, AMD was shipping 50,000 Athlon microprocessors to Hitachi per quarter. But by the middle of the year, AMD sold no microprocessors to Hitachi at all. In proceedings brought by the JFTC, Intel has accepted the JFTC charges of misconduct with respect to Hitachi.

49. **Gateway/eMachines.** From 2001 to 2004, Gateway was exclusively Intel. In 2001 former Gateway CEO, Ted Waitt, explained to an AMD executive that Intel offered him large sums not to deal with AMD, which he could not refuse: “I have to find a way back to profitability. If by dropping you, I become profitable, that is what I will do.” Shortly thereafter, Gateway stopped purchasing from AMD and issued a press release announcing its Intel exclusivity. The announcement came within weeks of similar public announcements of Intel exclusivity by both IBM and Micron.

50. **Supermicro.** Intel’s exclusive dealing also extends to small, specialty OEMs of which Supermicro is a good example. Supermicro, the preeminent system assembler for servers and other high-end computers, historically has followed the Dell strategy of never buying from AMD. This arrangement foreclosed AMD from a large part of the approximately one fifth of the server sector not controlled by the Tier One OEMs. Following two years of negotiation, Supermicro finally agreed last year to begin developing an Opteron-powered server; however, it so feared Intel retaliation that it secretly moved the AMD development to quarters behind Supermicro’s main manufacturing facility. Further, it forbade AMD from publicizing the product or beginning any marketing prior to its actual release. When, in April 2005, Supermicro finally broke away from years of Intel exclusivity, it restricted distribution of its newly-released Opteron-powered product to only sixty of its customers and promoted them with a glossy, upscale brochure devoid of its name and labeled “secret and confidential”.

b. Product-Line, Channel or Geographic Restrictions

51. Intel has also bought more limited exclusivity from OEMs in order to exclude AMD from the most profitable lines or from channels of distribution best tailored to take advantage of AMD’s price/performance advantage over Intel. In exchange for discriminatory discounts, subsidies or payments, for example, Intel has largely foreclosed AMD from the lucrative commercial desktop sector. Intel has focused on the major OEMs because, when IT executives from Fortune 1000 companies purchase desktop computers, they look for a strong brand on the box – Dell, IBM or HP. Knowing this, Intel has relentlessly fought to block the introduction of an

1 AMD-powered commercial desktop by the major OEMs who have not ceded total exclusivity to
2 Intel. What follows, again, are only representative examples of Intel misconduct.

3 52. **HP.** In 2002, when AMD set out to earn a place in HP's commercial desktop
4 product roadmap, HP demanded a \$25 million quarterly fund to compensate it for Intel's expected
5 retaliation. Eager to break into the commercial market, and to earn a place in HP's successful
6 "Evo" product line, AMD agreed instead to provide HP with the first million microprocessors for
7 free in an effort to overcome Intel's financial hold over HP. On the eve of the launch, HP
8 disclosed its plan to Intel, which told HP it considered AMD's entry into HP's commercial line a
9 "Richter 10" event. It immediately pressured HP into (1) withdrawing the AMD offering from its
10 premier "Evo" brand and (2) withholding the AMD-powered computer from HP's network of
11 independent value-added resellers, the HP's principal point of access to small business users for
12 whom the computer was designed in the first place. Intel went so far as to pressure HP's senior
13 management to consider firing the HP executive who spearheaded the AMD commercial desktop
14 proposal. As a result of Intel's coercion, the HP-AMD desktop offering was dead on arrival. HP
15 ended up taking only 160,000 of the million microprocessors AMD offered for free. As of today,
16 HP's AMD-equipped commercial desktops remain channel-restricted, and AMD's share of this
17 business remains insignificant.

18 53. Intel also purchased HP's exclusivity for its most popular notebook line. HP
19 captured 15% of the U.S. retail market last Christmas with an Intel-powered 14.1" display
20 notebook (the "DV 1000") with a popular power saving feature called Quick Play. When AMD
21 sought to convince HP to carry a similar AMD-powered notebook, HP declined. It explained that
22 Intel had paid between \$3 and \$4 million to lock up this product line for at least one year.

23 54. **Gateway.** After Gateway's 2004 merger with eMachines, AMD attempted to
24 revive the relationship it had enjoyed with Gateway until 2001, but experienced extremely limited
25 success. While Gateway built one AMD-powered desktop model at the request of Circuit City,
26 AMD remains locked out entirely of Gateway's direct internet sales, its commercial offerings and
27 its server line. According to Gateway executives, their Company has paid a high price for even its
28 limited AMD dealings. They claim that Intel has beaten them into "guacamole" in retaliation.

1 55. **IBM.** AMD and IBM began negotiations in August 2000 over a proposed
2 commercial PC business partnership. After seven months and with a deal nearing completion, Intel
3 approached IBM with an incentive-based program under which Intel would become IBM's
4 "preferred supplier" for processors in commercial products. "Preferred" meant exclusive. IBM
5 accepted Intel's proposal and terminated discussions with AMD. In return for that exclusivity,
6 according to IBM executive Ed Thum, Intel paid IBM "millions of dollars in market development
7 funds."

8 56. Intel also acted to thwart AMD efforts to partner with IBM on servers. Although
9 IBM joined AMD as a launch partner when it introduced its Opteron 64-bit server chip in April
10 2003 – signaling to the industry and IT professionals its confidence in the product – Intel soon
11 dissuaded IBM from aggressively marketing Opteron servers. After investing heavily in its design,
12 IBM consigned its one Opteron computer model to a single target market segment (High
13 Performance and Technical Computing). This was done, according to an industry report
14 (confirmed by an IBM executive), because Intel paid IBM to shelve any further Opteron
15 development. IBM also took Intel money in 2004 to scrap plans for a multiple-microprocessor
16 Opteron server it had already designed and previewed with customers.

17 57. Intel has also purchased IBM exclusivity in its "ThinkCentre" line of commercial
18 desktops. When AMD pressed IBM to add an Athlon 64 model to its "ThinkCentre" roadmap,
19 IBM executives explained that the move would cost them important Intel subsidies, and they
20 declined.

21 58. **Fujitsu.** In 2002, Fujitsu and AMD formed an alliance to develop a low-power
22 commercial notebook (FMV Lifebook MG Series) scheduled to go to market in the first quarter of
23 2003, which AMD spent over 20 million yen designing. Shortly before the launch, Fujitsu told
24 AMD that Intel would not allow it to launch an AMD-powered commercial notebook, and the
25 project died. To this day, AMD remains locked out of Fujitsu's commercial notebook lines.
26 Intel's exclusionary conduct with Fujitsu extends beyond commercial notebooks. In the consumer
27 space, for example, Intel purchased total exclusivity for Fujitsu's FM-Biblo NB consumer
28 notebook line. When AMD tried to break Intel's lock on Fujitsu notebooks by offering to match

any Intel discount, Fujitsu made clear that there was no price AMD could pay because Intel simply would not allow it. To this day, AMD remains locked out of Fujitsu's Biblo line.

59. **Fujitsu-Siemens.** Fujitsu-Siemens, a European joint-venture, was once a mainstay for AMD's desktop business, with AMD chips powering over 30% of Fujitsu-Siemens' offerings in the consumer sector. In early 2003, Intel offered Fujitsu-Siemens a "special discount" on Celeron processors which Fujitsu-Siemens accepted in exchange for hiding its AMD computers on its website and removing all references to commercial AMD-powered products in the company's retail catalog.

60. Intel has also succeeded in convincing Fujitsu-Siemens to impose market restrictions on its AMD-powered PCs. Its parent, Fujitsu, currently sells an AMD-equipped Lifebook S2010, a commercial notebook, but only in the U.S. and Japan. Fujitsu-Siemens has declined AMD's plea to offer the machine in the European market as well. Similarly, Fujitsu-Siemens designed for the European market the FMC Lifebook MG Series notebook. But it refused to offer that computer in Asia or North America. Finally, although Fujitsu-Siemens produces an AMD commercial desktop, the Scenico, it refuses to advertise it on its website, offering it instead only as a build-to-order product. Having invested significantly to bring these computers to market, Fujitsu-Siemens has been able to offer no explanation for its refusal to exploit them worldwide. AMD's unit share of Fujitsu-Siemens' business recently fell below 30% for the first time in four years.

61. **NEC.** Intel was forced to relax its hold on NEC's business when long-time NEC customer, Honda Motor Company, demanded that NEC supply it with servers powered by AMD's Opteron microprocessors. After underwriting the considerable expense of designing and manufacturing an Opteron server for Honda, NEC then inexplicably refused to market the product to any of its other customers.

62. There is no reason, other than Intel's chokehold on the OEMs, for AMD's inability to exploit its products in important sectors, particularly commercial desktops. These computers, which large corporate customers buy in the tens of thousands at a time, represent a lucrative opportunity for the supplier. Yet, the microprocessors that power them are identical to

1 microprocessors in consumer computers, a sector in which AMD has won both praise and market
2 share. The only material difference between the consumer and commercial segments is that many
3 more system builders supply desktops to consumers, making it more difficult for Intel to control
4 their microprocessor choice.

5 **c. Exclusionary Rebates**

6 63. Intel has also imposed on OEMs a system of first-dollar rebates that have the
7 practical and intended effect of creating exclusive or near-exclusive dealing arrangements and
8 artificially foreclosing AMD from competing for a meaningful share of the market. In general, the
9 rebate schemes operate as follows: quarterly, Intel unilaterally establishes for each of its customers
10 a target level of purchases of Intel microprocessors. If the customer achieves the target, it is
11 entitled to a rebate on all of the quarter's purchases of all microprocessors – back to the very first
12 one – generally in the neighborhood of 8-10% of the price paid. Intel provides the rebate in cash at
13 the quarter's close. OEMs operate on razor-thin margins, so qualifying for an Intel rebate
14 frequently means the difference between reporting a profit or a loss in the coming – and closely
15 watched – quarterly earnings.

16 64. In contrast to “volume discounts” that sellers offer on a graduated and
17 nondiscriminatory basis to reflect cost efficiencies that accrue when dealing in larger quantities,
18 Intel's is a system of “penetration” or “loyalty” rebates designed to exclude AMD from a
19 substantial portion of the market. Intel intentionally sets a rebate trigger at a level of purchases it
20 knows to constitute a dominant percentage of a customer's needs. It is able to develop
21 discriminatory, customer-by-customer unit or dollar targets that lock that percentage (without ever
22 referencing it) because industry publications accurately forecast and track anticipated sales and
23 because OEM market shares – which industry publications also report weekly, monthly and
24 quarterly – do not change significantly quarter to quarter.

25 65. Intel's retroactive discounts can operate to price microprocessors so low that AMD
26 is put at a competitive disadvantage it cannot overcome. Consider an OEM which anticipates
27 purchasing 100 microprocessors that both Intel and AMD sell for \$100 each. Intel knows that
28 because of its prior model introductions, the customer will have to buy 60 from Intel. The

customer considers buying its expected balance for its new models from AMD, but Intel offers it a rebate that will entitle it to a 10% retroactive discount if, but only if, it purchases 90 units or more. If the customer buys 30 of the 40 additional units from Intel to qualify for the rebate, its incremental cost for the 30 will be \$3,000 (30 units at \$100/unit) less the 10% rebate going back to the first unit it purchased, which amounts to \$900 (90 units x \$10/unit), for a total of \$2,100.

66. AMD can only capture the 30 units if it offers a price that makes the customer indifferent between getting the Intel rebate and getting an overall equivalent deal on AMD microprocessors. Thus, for the 30 units that are up for grabs, AMD would have to lower its price to \$70 per unit (because 30 units x \$70/unit equals the \$2,100 net cost for buying from Intel). In effect, the rebate forces AMD to charge \$20 dollars less than the \$90 discounted Intel price if it attempts to get any business from the customer at all. That is because it is selling the customer only 30 units over which it has to spread a \$900 discount while Intel can spread it out over 90. At the end of the day, this creates a serious competitive disadvantage for AMD. As shown in the example, AMD is forced to discount its price three times as much as Intel just to match the Intel discount – not because its processors are inferior – far from it – but because Intel has assured for itself – by its past predatory practices – a significant base of assured demand which enables Intel to inexpensively spread its first-dollar discount. Importantly, this new base of demand – driven by the OEM’s purchasing – will enable Intel to repeat its exclusionary practice when the next line of models is unveiled.

67. At least in the short run, most if not all of the major OEMs must engage significantly with Intel (1) because AMD is too small to service all their needs while continuing to satisfy other customer demand; (2) because to meet customer expectations, OEMs must assure commercial computer buyers that specifications, including the microprocessor, will remain unchanged during the product’s lifecycle; and (3) because Intel has encouraged end-users to specify that processors be of the same family among similar computers in one installation, as this is perceived to increase reliability (although technically this is not the case). Intel uses its retroactive discounts to make its large, captive market share self-perpetuating. In any one quarter, AMD cannot economically match Intel’s retroactive rebate because it competes for too small a share of

the customer's volume over which to spread the dollars necessary to equal the customer's total Intel cost savings. As a result, it loses the business and thus goes into the next selling cycle with Intel imbedded in additional customer product over which Intel can spread its rebates. This serves again to artificially constrain AMD's opportunity to match Intel's ensuing round of retroactive discounts. Intel's intertemporal leveraging of its market share effectively forecloses AMD from ever having a fair opportunity to compete.

68. Intel exacts a severe penalty from OEMs who fail to meet their targets. For example, during the fourth quarter of 2004, AMD succeeded in getting on the HP retail roadmap for mobile computers, and its products sold very well, helping AMD capture nearly 60% of HP's U.S. retail sales for the quarter. Intel responded by withholding HP's fourth quarter rebate check and refusing to waive HP's failure to achieve its targeted rebate goal. Instead, Intel "allowed" HP to make up the shortfall in succeeding quarters when HP promised Intel at least 90% of HP's mainstream retail business.

69. Intel has deployed a variety of variants of this basic rebate scheme. In the case of one European OEM, for example, Intel imposes the additional condition that the customer purchase target volumes of specific processors, generally microprocessors against which AMD's products compete particularly well. In the case of another, Intel offers as an inducement discounted microprocessors rather than rebates. In the case of the European division of one U.S. OEM, Intel has imposed a target of between 70-90% of the customer's requirements. Rather than qualifying the customer for a cash rebate, however, meeting the target entitles the OEM to purchase designated processors at up to 20% below "normal" cost, thereby enabling the customer to obtain favorable pricing on bundled products (*e.g.*, a Centrino-series processor and chipset) and/or to receive product offerings not available to competitors.

70. Intel makes similar offers to smaller OEMs but they are generally unwritten, and Intel leaves undefined the consequences of failing to meet a target. Thus, a customer falls short at its peril, knowing only that it may lose its account with Intel and have to source future products from Intel distributors, which is both more expensive and provides less security of supply than direct purchase.

71. The salient features of all of Intel's rebate schemes are that they are discriminatory and market-foreclosing. If the customer chooses to purchase any significant quantity of microprocessors from AMD, it will not qualify for its rebate, and its price will be higher on all the Intel processors it buys across the board. By tailoring targets to each customer's size and anticipated volume, Intel locks up significant percentages of the market much more effectively and at a lesser cost to itself – but to a greater harm to AMD and ultimately consumers – as compared to offering such rebates for comparable purchase levels to all customers on a nondiscriminatory basis.

72. Intel's use of retroactive rebates leads, in some cases, to below-cost pricing on incremental sales. The following example shows why a customer's incremental cost of purchasing from Intel those units that both Intel and AMD could supply (the "contested sales") can be zero or even negative – a price AMD cannot match. Consider an OEM which has purchased 90 units of Microprocessor A at \$100 per unit under an Intel rebate scheme that entitles it to a 10% first-dollar discount but only after it purchases more than 90 units. Its cost for the 90 processors is \$9,000. The OEM is now considering an additional purchase of a further 10 units. If it makes the additional purchase from Intel, the OEM will meet the expenditure condition and will qualify for the 10% per unit discount on all units. Accordingly, the total spent will remain \$9,000. The incremental cost of the 10 additional microprocessors – as well as Intel's incremental revenue – will be zero (the \$1,000 additionally spent, less the \$1,000 thereby saved). In other words, this scheme leads to incremental units being offered to the OEMs for nothing, leaving AMD hopelessly boxed out.

73. Importantly, even if Intel were to earn some incremental revenue on these marginal units, these additional revenues could be below the incremental cost of their production. As a result, Intel's additional profit on the sale would be negative, but for the fact that it had a long-run exclusionary effect on AMD. (Obviously, if Intel earns no revenues on its additional sales, it has to be foregoing profits.) As this analysis shows, some of Intel's discriminatory, retroactive rebates amount to unlawful, predatory below-cost pricing.

74. Even where Intel's prices are above cost on the incremental volumes and overall despite its retroactive rebate schemes, these rebates enable Intel to lower prices selectively in the

1 contested market segment while maintaining higher prices in its captive market. For example, Intel
2 can offer rebates which are granted across the entire volume of sales but which are triggered only if
3 the OEM increases its purchases beyond the portion of its requirements which is captive to Intel.
4 Indeed, Intel can even price above the “monopoly” level for the volumes below the benchmark and
5 offer huge discounts for additional purchases knowing full well that the OEM will not buy less than
6 the benchmark and, instead, source the overwhelming share of its purchases from Intel thereby
7 “qualifying” for the putative rebate while at the same time denying AMD any reasonable volume
8 opportunity.

9 75. The use of retroactive rebates to limit AMD to a small share of an OEM’s business
10 heightens the obstacle to inducing the OEM to launch AMD-powered platforms. OEMs incur
11 substantial expense in designing and engineering a new computer, and make the investment only if
12 they foresee a substantial chance of selling a sufficient volume to recoup it. Intel’s rebate and other
13 business strategies effectively cap the volumes of AMD-powered products that an OEM can sell.
14 Hence, Intel’s practices exacerbate normal impediments to entry and expansion.

15
16 **d. Threats of Retaliation**

17 76. Beyond exclusive dealing, product and channel restrictions and exclusionary
18 rebates, Intel has resorted to old-fashioned threats, intimidation and “knee-capping” to deter OEMs
19 from dealing with AMD. Intel has a variety of pressure points at its disposal: it can unilaterally
20 reduce or withdraw a discount, rebate or subsidy; it can impose a discriminatory price increase on a
21 disfavored customer, extend a price cut to that customer’s competitor, or force retailers into
22 dropping the customer’s computers and buying from its competitor instead; or it can delay or
23 dispute an allowance or rebate – all of which can turn a profitable quarter for an OEM into an
24 unprofitable one. Other pressure points on accounts it deems disloyal include threatening to delay
25 or curtail supplies of scarce processors or essential technical information. Examples abound.

26 77. As Gateway executives have recounted, Intel’s threats beat them into “guacamole.”
27 But Gateway is not alone. Prior to its merger with HP, Compaq Computer received Intel threats
28 every time it engaged with AMD. In late 2000, for example, Compaq’s CEO, Michael Capellas,

disclosed that because of the volume of business he had given to AMD, Intel withheld delivery of server chips that Compaq desperately needed. Reporting that “he had a gun to his head,” Capellas informed an AMD executive that he had to stop buying AMD processors.

78. In 2002, Intel pointed its gun at NEC. Intel threatened to discontinue providing NEC with the technological roadmap of future Intel products if NEC did not convert its entire line of Value Star L computers to Intel microprocessors. Without that roadmap, NEC would be at a distinct competitive disadvantage. Predictably, NEC succumbed and eliminated AMD from the Value Star L series in 2002 and 2003.

79. NEC’s European subsidiary, NEC-CI, which operates NEC’s European and non-Japanese Asian divisions, reported that Intel executives said they would “destroy” NEC-CI for engaging with AMD in the commercial desktop segment. Intel told NEC-CI’s retailers that NEC-CI’s AMD dealings could impair its ability to supply products to its customers, and when NEC-CI resisted the pressure, Intel imposed a discriminatory price increase.

80. AMD had been engaged in discussions with IBM about introducing an Opteron “blade” server, when IBM suddenly announced that any such product it distributed could not bear an IBM logo. When pressed for an explanation, IBM reported that it could not appear overly supportive of AMD server products because it feared Intel retaliation.

e. Interference with AMD Product Launches

81. Key to gaining quick market acceptance of a new microprocessor is a chipmaker’s ability to develop a lineup of reputable launch partners, consisting of OEMs prepared to roll out products featuring the chip, major customers who are willing to buy and embrace it, and other industry allies, such as major software vendors and infrastructure partners who can attest to its quality and reliability. Particularly for commercial and enterprise (*i.e.*, server-work station) purchasers, a successful and impressive “launch” is essential to generating confidence among the computer professionals who will be the potential audience for the new microprocessor.

82. Aware of the importance of product launches, Intel has done its utmost to undermine AMD’s. Set forth below are several examples.

83. AMD's September 23, 2003, launch of Athlon64 was a watershed event for the Company. Upon learning the launch schedule, Intel did its best to disrupt it. For example, Acer committed to support the AMD rollout by making a senior executive available for a videotaped endorsement and by timing the introduction of two computers, a desktop and a notebook, to coincide with AMD events planned for Cannes, San Francisco and Taiwan. Days before the event, Intel CEO, Craig Barrett, visited Acer's Chairman, CEO and President in Taiwan, expressed to them Intel's "concern" and said Acer would suffer "severe consequences" if it publicly supported AMD's launch. The Barrett visit coincided with an unexplained delay by Intel providing \$15-20 million in market development funds owed to Acer. As a result, Acer withdrew from the launch in the U.S. and Taiwan, pulled its promotional materials, banned AMD's use of the video, and delayed the announcement of its Athlon64-powered computers. Acer's President subsequently reported that the only thing different about Intel's threats was the messenger – they were "usually done by lower ranking managers," not Intel's CEO.

84. HP also withdrew precipitously from the Athlon64 launch after committing to participate. HP had agreed to support the launch by producing a promotional video and by sending senior executives to all three launch sites. Just before launch, however, HP manager, John Romano, pulled the video and announced that HP would only be sending a junior manager, and then only to Europe.

85. Other AMD customers and channel partners reporting Intel coercion to withdraw from the Athlon64 launch were Lenovo, NEC-CI and Best Buy.

86. Intel also disrupted AMD's launch of its Opteron server chip, which was rolled out on April 22, 2003, with few in attendance and little industry support. A computer industry journal reported Intel's fingerprints: "They all [vendors] told me that prior to the launch, they received a phone call from Intel. Intel asked if they were going to the launch. If they replied yes, the Intel rep asked them if it was 'important to them to go,' or 'if they really wanted to go.' Pressing the vendors, I got the same response, 'Intel is too smart to threaten us directly, but it was quite clear from that phone call that we would be risking our various kickback money if we went.'"

87. Other companies that reported being intimidated from participating in the Opteron launch were MSI, Atipa, Solectron and Fujitsu-Siemens. Indeed, Intel representatives told Fujitsu-Siemens' executives in the weeks preceding the Opteron launch that if they attended, they would be the only Tier One OEM showing its support as all of the others would back out. With the exception of IBM, Intel was right.

88. These are not isolated examples, but rather illustrations of Intel's relentless campaign to undermine marketing efforts by its one remaining competitor. For example, IBM pulled its AMD-powered computers from the 2004 Palisades eServer and PC Show, citing a contractual agreement with Intel said to prohibit it from endorsing those competitive products. And at the 2004 Super Computing Show, an annual conference devoted to high performance computing, Intel offered two other AMD customers money to remove AMD systems from their booths. At CeBit, Intel threatened to pull a half million dollars of support from Fujitsu-Siemens for displaying AMD products (which were removed).

f. Product Bundling

89. Intel also uses product bundling as an exclusionary weapon in a variety of ways. Intel's most common deployment is in bidding for a new OEM platform: it bundles microprocessors with free (or heavily discounted) chipsets or motherboards, often offered in amounts exceeding the OEM's requirements for the new platform. (The excess, of course, is only compatible with Intel processors, thereby providing the OEM a strong inducement to go with Intel rather than AMD on uncommitted models.) AMD does not sell chipsets or motherboards; they are provided by independent suppliers such as ATI, nVidia and Via which incur their own costs and control their own pricing. Hence, to match Intel's bundled microprocessor-chipsets-motherboards offer, AMD must extend a discount on its microprocessors that will not only match any Intel discount on the microprocessors themselves but also will compensate the OEM for the savings it will lose on independent Intel chipset and motherboard purchases. The additional compensation AMD is forced to provide through a discount on the sale of microprocessors alone makes AMD's sale of microprocessors potentially unremunerative, and it also enables Intel to avoid competing with AMD directly on microprocessor price and quality by imposing disproportionate burdens on

AMD that are wholly unrelated to AMD's product quality which, as has been demonstrated, is frequently superior to that of Intel's.

90. As retaliation for dealing with AMD, Intel has also used chipset pricing as a bludgeon. For example, in 2003, Acer had committed to launch the AMD Athlon XP. Acer executives worldwide had been working with AMD to bring the product to market post-launch. But, on the eve of the launch the Acer management in Taiwan pulled the plug. AMD learned from Acer executives that Intel had threatened to raise chipset prices by \$10 on all Intel-based Acer systems if *any* processor business was awarded to AMD outside of Europe.

91. Intel's dealings with OEMs are unlawfully exclusionary, have no pro-competitive justification, and are intended to maintain its monopoly.

2. Practices Directed At Distributors

92. Intel uses many of the same tactics it practices on OEMs to restrict distributors from carrying AMD processors or selling AMD products into markets it deems strategic. For example, it entered into an exclusive deal with Synnex, which is one of the largest U.S. distributors. Given Intel's 80% plus market share, there is no pro-competitive justification for this arrangement.

93. As with OEMs, Intel offers discounts and rebates to distributors on the condition that they not do business with AMD, either worldwide or in strategic sub-markets. For example, in December 2004, Ingram Micro, Intel's biggest distributor in China, suddenly cut off discussions to distribute AMD chips as well. A high-ranking Ingram Micro official later reported to AMD that Ingram Micro had no choice because Intel proffered loyalty rebates that were too lucrative to pass up.

94. Intel also offers a panoply of special programs for distributors who carry Intel microprocessors exclusively: marketing bonuses, increased rebates, credit programs for new customers (credits that can be used for all products from Intel and any other suppliers), payment for normal freight charges, and special inventory assistance such as credits to offset inventory costs. When such more nuanced means of achieving exclusivity fail, Intel has simply bribed distributors not to do business with AMD. For example, a high-ranking Tech Data executive turned down \$1

1 million to stop doing business with AMD, which caused the Intel representatives to ask, “How
2 much would it take?”

3 95. Intel also offers retroactive rebates triggered when a distributor reaches a prescribed
4 buying quota. Like the rebates offered to OEMs, the intent is to inflict economic punishment on
5 those who do too much AMD business. But, unlike OEMs, distributors remain ignorant of the
6 goals Intel has set for them or the precise consequences of failing to meet them. Intel does not
7 share this information with them; they simply receive a check at the end of a quarter. As a result,
8 every AMD chip they purchase, they buy at their peril.

9 96. Finally, those distributors who choose to do business with AMD have been
10 conditioned to expect Intel retaliation. For example, when ASI, one of the largest computer
11 hardware and software distributors, began distributing AMD processors, Intel demanded that it
12 exclude AMD personnel from its ASI Technology Shows and its General Managers’ meetings.
13 Until recently, ASI refused master distributor status from AMD, despite the financial benefits
14 attached, because it feared that such a public alignment with AMD would trigger Intel retaliation.
15 When, in January 2005, it finally accepted Master Distributor status, Intel began reducing the level
16 of market development funds ASI received.

17 97. Avnet Inc., one of the world’s largest computer equipment distributors and an avid
18 AMD supporter, has also received its share of Intel intimidation. Thus, Avnet cited Intel as the
19 reason it could not distribute AMD parts to the industrial sector. And when AMD launched its
20 Opteron server chip, Intel made clear it would make it “painful” for Avnet were it to begin
21 distributing that chip. When Avnet did so anyway, Intel threatened to cut it off. Another
22 distributor got even worse treatment. In retaliation for Supercom’s AMD dealings in Canada, Intel
23 pressured Supercom’s customers to switch to another distributor.

24 98. These are not the only distributors that Intel has attempted to coerce from doing
25 business with AMD. Others include R.I.C. in Germany, Paradigit in the Netherlands, and Quote
26 Components, also in the Netherlands.

27 99. Intel’s dealings with distributors are unlawfully exclusionary, have no
28 procompetitive justification, and are intended to maintain its monopoly.

3. Practices Directed At Retailers

100. In both the U.S. and internationally, approximately one fifth of desktop and notebook computers are purchased at retail stores. A handful of retailers dominate the U.S. PC market: Best Buy and Circuit City are the largest. Other significant but smaller retailers are Walmart/Sams Club, Staples, Office Depot and Office Max.

101. Most of the PCs sold at retail are sold during four or five “buying seasons” that correspond to events on the calendar (“Dads and Grads,” “Back to School,” “Holiday,” etc.), and retailers refresh their inventory for each. A chipmaker faces a two-step process to get its platform on retail shelves: first, it must convince one or more OEMs to build machines using its microprocessor at a suggested price point (called “getting on the roadmap”); and second, it must convince the retailer to stock and devote shelf space to these machines. Shelf space does not come for free. The major retailers demand market development funds (“MDF”) in exchange. MDF can consist of cooperative advertising support, but more frequently it comprises a marketing-related opportunity that a chipmaker must buy for tens of thousands of dollars, for example, space in a Sunday circular, an in-store display or an internet training opportunity with the chain’s sales staff. The MDF required to secure shelf space can run as high as \$25 per box depending on the computer price point and how urgently the competing chipmakers want the shelf space.

102. Intel has historically enjoyed an advantage over AMD at retail because, using many of the strategies described above, it has had greater access to the OEMs’ roadmaps and the ability to exert pressure to keep AMD out of their product plans. Also, it has significantly greater financial resources with which to buy retail shelf space.

103. But to leverage those advantages, Intel has also made exclusive deals with many key retailers around the world. For example, until recently Office Depot declined to stock AMD-powered notebooks regardless of the amount of MDF AMD offered, citing its “premier” status with Intel that would be put at risk. Fry’s is Fujitsu’s only retailer in the United States. When Intel learned that Fry’s was very successfully marketing a Fujitsu’s Athlon™ XP-based notebook, it offered Fry’s a large payment to remove it from its shelves.

1 104. The story is even worse in Europe. AMD has been entirely shut out from Media
2 Markt, Europe's largest computer retailer, which accounts for 35% of Germany's retail sales. Intel
3 provides Media Markt between \$15-20 million of MDF annually, and since 1997 Media Markt has
4 carried Intel computers exclusively. Intel subsidies also foreclose AMD from Aldi, a leading
5 German food retail chain, whose PC sales account for an additional 15-20% of the German market.

6 105. In the United Kingdom, Intel has locked up substantially all of the business of DSG
7 (Dixon Services Group), operator of three major chains including Dixon and PC World that
8 collectively account for two thirds of the U.K. PC market. In exchange for Intel payments, DSG
9 has agreed to keep AMD's share of its business below 10%. Like Media Markt, DSG reports that
10 Intel penalizes it with reduced MDF just on account of the small amount of business it does with
11 AMD. Toys 'R' Us in the U.K. is also exclusive to Intel. Time, another U.K. retailer (which builds
12 computers as well), took a substantial MDF payment from Intel in exchange for near-exclusivity on
13 notebooks during the first half of 2004, and it reports that Intel has withheld discounts because
14 Time has introduced too many AMD Athlon64 desktop models. In France, Intel has brought
15 pressure on the largest retailers, including Conforama, Boulanger, causing them to cease dealing
16 with AMD or drastically reduce their AMD business.

17 106. AMD has nonetheless made some progress in gaining retail market share. Because
18 of price/performance advantages, which are key in retail, OEMs build approximately 15% of their
19 U.S. domestic market desktops with AMD processors; within notebook roadmaps, AMD represents
20 approximately 10%. On a shelf-space to sales basis, AMD has generally outperformed Intel. For
21 instance, in the desktop segment during the fourth quarter of 2004, AMD-equipped computers
22 captured between a 33%-38% share of Circuit City's sales, despite being limited to five of the 25
23 models (20%) on the Circuit City shelves. And with approximately 15% of the shelf space allotted
24 to its products at Best Buy and CompUSA, AMD computers accounted for roughly 30% and 22%
25 of their sales, respectively. These numbers confirm that AMD's products perform well at retail,
26 provided that space is available.

27 107. In fact, Intel's sales staff was instructed "not to let this happen again." As a result,
28 Intel instituted a rebate program similar to what it foisted on OEMs, with similar exclusionary

1 effect. Under this program, Intel provides full MDF payments to retailers, such as Best Buy and
2 Circuit City, only if they agree to limit to 20% not just the shelf space devoted to AMD-based
3 products, but also the share of revenues they generate from selling AMD platforms. If AMD's
4 share exceeds 20%, the offending retailer's marketing support from Intel is cut by 33% *across all*
5 *products*.

6 108. This is how the program works at Circuit City. If less than 20% of Circuit City's
7 notebook revenue derives from AMD-based computers (30% for desktops), Intel has agreed to pay
8 Circuit City \$15 in MDF per Intel-powered machine; but if the AMD percentage reaches or
9 exceeds 20%, Circuit City's MDF subsidy is cut to \$10. This creates a \$5 per box "tax" on the
10 retailer for doing 20% or more of its dollar volume with AMD-powered machines; and this "tax" is
11 applicable to all of the Intel-powered machines that the retailer buys, back to the very first
12 machine.

13 109. The following illustrates the competitive disadvantage this creates for AMD: if
14 Circuit City were to purchase only Intel-powered notebooks for its 200,000-unit inventory in a
15 quarter, Intel would pay it \$15 of MDF per computer, or a total of \$3 million. However, if Circuit
16 City were to reduce its purchases of Intel-based notebooks to 80% (160,000 units) so that it could
17 stock a modest number of AMD-powered computers, Intel MDF would fall to \$1.6 million (\$10
18 MDF/unit times 160,000 units). Were AMD to match Intel's \$10 per unit MDF on the 40,000 units
19 it supplied, Circuit City would receive an additional \$400,000, bringing its total MDF to \$2
20 million, leaving it \$1 million worse off for doing business with AMD. For AMD to make Circuit
21 City "whole," it would have to vastly increase its MDF on its 20% share to \$35 MDF per unit
22 (40,000 x \$35 = \$1.4M), which together with Intel's \$1.6 million would bring the total MDF back
23 to \$3 million. In other words, to just capture a 20% share, AMD must offer two or three times as
24 much MDF as Intel – because it has far fewer units over which to spread the difference. Given
25 these perverse economies, Circuit City is not likely to allocate less than 80% of its notebook sales
26 to Intel, even if it means taking AMD stock off the shelves at the end of a quarter. (Indeed, to
27 avoid inadvertently running afoul of the limitation, a prudent distributor would keep AMD's share
28 well short of 20%.)

110. Nor is Intel above threatening retailers to gain preferred treatment. For example, at the recent CeBit computer show in Hanover, Germany (the largest computer show in the world), a German chain, Vobis, hung an AMD Turion64 banner from its booth as part of a co-marketing agreement with AMD and its OEM partner (Yakamo) to announce AMD's new mobile microprocessor. Intel's German general manager and its vice president for mobile products demanded that the Turion64 banner be removed. When Vobis' CEO declined, the Intel representatives threatened immediately to stop microprocessor shipments to Vobis' supplier. The banner was removed before the CeBit show opened.

111. Intel's dealings with retailers are unlawfully exclusionary, have no procompetitive justification, and are intended to maintain its monopoly.

4. Intel's Standard Setting and Other Technical Abuses

a. Intel's Exclusion of AMD from Industry Standards

112. Companies within the computer industry often agree to design certain aspects of their products in accordance with industry standards to ensure broad compatibility. Indeed, standards are not only ubiquitous in the computer industry, they are essential. But when a company is unfairly excluded from the standards-setting process or is denied timely access to the standard, competition can be restrained in a way that reverberates throughout the entire market. Intel has employed, and continues to employ, a variety of tactics that have the purpose and effect of excluding and/or hampering AMD's full and active participation in the development of important industry standards. It has also worked to deny AMD timely access to such standards. Its efforts have hampered AMD's ability to vigorously compete in the market.

113. By way of example, Intel and AMD each develop and manufacture memory controller technologies that allow their processors and related components to communicate with memory. Intel designs and manufactures an entirely separate chip for this purpose, known as the Graphics and Memory Controller Hub, but AMD embeds its memory controllers directly into its processors, thus dispensing with the need for an extra chip and speeding up communication. Both companies need to know and have access to memory standards well in advance of producing their

1 processors and/or chipsets so that their memory controller designs will be compatible with the next
2 generation of memory devices.

3 114. The Joint Electron Device Engineering Council (“JEDEC”) is the industry
4 organization responsible for the standards governing the most recent generations of computer
5 memory chips. Even though JEDEC was already developing the standards for the next generation
6 of memory chips, Intel convened a secret committee that it dubbed the Advanced microprocessors
7 Technology (“ADT”) Consortium to develop a competing memory standard.

8 115. The ADT Consortium was cleverly structured with multiple tiers of membership,
9 each with different levels of access to information. The majority of companies were consigned to
10 the lowest tier, meaning that they would receive access to the memory standard only upon its
11 completion, but not during its development. The actual development effort was undertaken by
12 companies with the highest tier membership status, which Intel reserved for itself and the major
13 memory manufacturers. No other companies were allowed input or full access to the standard
14 during its development by the ADT Consortium.

15 116. AMD desperately needed access to the developing standard, and input into its
16 definition, in order to be able to launch a microprocessor with updated memory controller
17 technology at the same time as Intel. AMD lobbied repeatedly for higher tier membership status,
18 but was continually turned down. Intel had structured the ADT Consortium’s rules to require a
19 unanimous vote – a rule that gave Intel veto power – over any decision to allow AMD to join the
20 development committee; and it used that veto power to cause the Consortium arbitrarily to reject
21 AMD’s application.

22 117. By foreclosing AMD from input or access to the memory standard during its
23 development process, Intel deliberately placed AMD at a severe competitive disadvantage. As a
24 consequence of its exclusion, AMD had no opportunity to monitor participants’ suggestions and to
25 object to Intel-proposed features that were without substantial benefit to consumers and were
26 instead motivated by Intel’s desire to disadvantage AMD’s microprocessor architecture.
27 Furthermore, by keeping the ADT Consortium memory standard-setting process shrouded in
28 secrecy, Intel was able to gain a significant head start. While the ADT Consortium was ultimately

1 unsuccessful in implementing an industry standard, this type of exclusionary conduct exemplifies
2 Intel's attempts to use industry standard-setting to competitively disadvantage AMD in an
3 unlawfully exclusionary manner.

4 118. Indeed, Intel is attempting a repeat performance with respect to a new memory
5 standard, this time excluding AMD by avoiding the open standard-setting committee entirely. Intel
6 is currently coercing the major memory producers into signing non-disclosure agreements and
7 working exclusively with Intel in a "secret" committee to develop the next generation memory
8 interface standard. Once under this agreement, the memory manufacturers are prohibited from
9 sharing information about their own product designs implementing the memory interface standard.
10 This has the effect of preventing AMD from completing the design of its processor memory
11 controllers until Intel permits memory manufacturers to communicate their interface specifications
12 to the industry.

13 119. By this scheme, Intel tightens its control over the industry by converting what the
14 component manufacturers intend as a public standard into a proprietary one, and thereby
15 guarantees itself an undeserved head-start and unfair competitive advantage.

16
17 **b. Intel's Promotion of Industry Standards that Disadvantage AMD**

18 120. Even where it has been unable to exclude AMD from participating in the
19 development of industry standards, Intel has attempted to drive the adoption of standards having no
20 substantial consumer benefit and whose sole or dominant purpose was to competitively
21 disadvantage AMD based on its highly integrated microprocessor architecture.

22 121. As an example, in 2004, JEDEC began developing standards governing the design
23 of the memory modules for next generation ("DDR3") memory devices. These modules, known as
24 dual inline memory modules, or "DIMMs," consisted of printed circuit boards upon which a
25 number of memory chips were mounted. The DIMMs connected the memory chips to the
26 computer's motherboard through a series of metal connectors known as "pins." One purpose of the
27 JEDEC standards was to define the functions of these pins so as to enable chipmakers to design
28

1 compatible memory controllers that would allow their microprocessors and the memory on the
2 DIMMs to communicate.

3 122. The JEDEC committee, which consists of members representing companies
4 throughout the computer industry, had already adopted a scheme for defining the pins for the
5 previous generation (“DDR2”) DIMMs used in desktop and laptop computers. When the JEDEC
6 committee began work on standards for DDR3 memory modules for desktop computers, Intel
7 proposed that the committee adopt a pin definition similar to that used for the DDR2 memory
8 modules. This proposal made perfect sense, as Intel explained to the committee, because it allowed
9 DDR3 memory controllers to be compatible with DDR2 and DDR3 memory modules.

10 123. However, when the JEDEC committee began to define the pins for DDR3 laptop
11 memory modules in this consistent manner, Intel completely reversed its position,
12 counterproposing instead that the committee rearrange the pin definitions. Intel’s proposal had no
13 discernable technical merit or basis.

14 124. In fact, Intel’s motivation for proposing modification of the laptop memory module
15 pin definition was to competitively disadvantage AMD. Any modification to the laptop memory
16 module pin definition would require Intel and AMD to make corresponding modifications of their
17 memory controllers. AMD’s microprocessor design, while representing a huge breakthrough in
18 integration, embeds the memory controller directly into its microprocessor. While this produces
19 significant computing advantages, modification of an embedded memory controller requires
20 significantly more time and expense.

21 125. Knowing this vulnerability, Intel proposed its modified DDR3 memory module pin
22 definition for laptop computers for the purpose of delaying AMD’s introduction of a
23 technologically superior part. While Intel’s proposal was ultimately rejected by the JEDEC
24 committee, confirming the proposal’s complete lack of technical merit, this is yet another example
25 of how Intel has attempted to drive industry standards to achieve its exclusionary ends.
26
27
28

c. Intel's Leveraging of Its Other Product Lines to Unfairly Disadvantage

(1) AMD in the Marketplace

126. Intel has also designed and marketed microprocessor-related products with the goal of compromising performance for those who opt for AMD solutions, even if it requires sacrificing its own product quality and integrity.

127. An example is Intel's compilers. Generally, independent software vendors ("ISVs") write software programs in high-level languages, such as C, C++, or Fortran. Before these programs can be understood by a computer system, they must be translated into object code – a machine-readable language – by a software program called a compiler. Different companies write compilers for different operating systems (Windows, Linux, etc.) and for different programming languages (C, C++, Fortran, etc.). Intel offers compilers for use with a variety of different operating systems and programming languages.

128. Intel's compilers are designed to perform specialized types of optimizations that are particularly advantageous for ISVs developing software programs that rely heavily upon floating point or vectorized mathematical calculations. Such programs include, for example, mathematical modeling, multimedia, and video game applications.

129. Intel has designed its compiler purposely to degrade performance when a program is run on an AMD platform. To achieve this, Intel designed the compiler to compile code along several alternate code paths. Some paths are executed when the program runs on an Intel platform and others are executed when the program is operated on a computer with an AMD microprocessor. (The choice of code path is determined when the program is started, using a feature known as "CPUID" which identifies the computer's microprocessor.) By design, the code paths were not created equally. If the program detects a "Genuine Intel" microprocessor, it executes a fully optimized code path and operates with the maximum efficiency. However, if the program detects an "Authentic AMD" microprocessor, it executes a different code path that will degrade the program's performance or cause it to crash.

130. ISVs are forced to choose between Intel's compilers, which degrade the performance of their software when operated with AMD microprocessors, or third-party compilers,

1 which do not contain Intel's particular optimizations. Sadly for AMD and its customers, for
2 legitimate reasons Intel's compilers appeal to certain groups of ISVs, especially those developing
3 software programs that rely heavily on floating point and vectorized math calculations.
4 Unbeknownst to them, performance of their programs is degraded when run on an AMD
5 microprocessor not because of design deficiencies on the part of AMD, but deviousness on the part
6 of Intel.

7 **VIII. EFFECTS OF INTEL'S MISCONDUCT**

8 131. Intel's unlawful conduct has caused and will continue to cause substantial harm to
9 competition in the market for x86 microprocessors in domestic, import, and export trade. Were it
10 not for Intel's acts, AMD and others would be able to compete for microprocessor business on
11 competitive merit, both domestically and internationally, bringing customers and end-product
12 consumers lower prices, enhanced innovation, and greater freedom of choice.

13 132. Intel's anticompetitive acts both inside and outside the territorial boundaries of the
14 United States have a direct, substantial, and reasonably foreseeable effect on trade and commerce
15 that is not trade and commerce with foreign nations, and on United States import trade and
16 commerce. In maintaining its monopoly by unlawfully denying rivals a competitive opportunity to
17 achieve minimum levels of efficient scale, Intel must necessarily exclude them from the product
18 market world wide. As the domestic U.S. market is but an integral part of the world market,
19 successful monopolization of the U.S. market is dependent on world market exclusion, lest foreign
20 sales vitalize a rival's U.S. competitive potential.

21 133. Intel's Sherman Act violative conduct throughout the world has caused and will
22 continue to cause substantial harm to the business of AMD in the domestic, import, and export
23 trades, in the form of artificially constrained market share, lost profits and increased costs of
24 capital. Additionally, that same conduct has had, and will continue to have, a direct, substantial,
25 and reasonably foreseeable effect on AMD's ability to sell its goods to foreign customers in
26 restraint of its U.S.-based and directed business, including its U.S. export business. These harms
27 are evidenced by the following:

1 • When AMD first entered the server market in 2002 with its Athlon microprocessor – a
2 part designed for desktops, not servers – the small OEMs and white-box vendors deploying the
3 chip nonetheless managed to secure approximately 3% of the worldwide server market. AMD
4 introduced its next generation Opteron microprocessor for servers the following year, and the chip
5 won rave reviews and passionate customer testimonials, including Best of Show at the June 2003
6 ClusterWorld Conference and Expo and Best Processor award in July 2003 from InfoWorld.
7 Nonetheless, by means of its exclusionary and anticompetitive conduct, as of the Fourth Quarter
8 2004, Intel had limited AMD’s worldwide server market share to less than 5%, not appreciably
9 more than before it introduced the Opteron.

10 • Intel’s exclusionary conduct has successfully boxed AMD out of the notebook sector. Its
11 exclusive deals with Dell, Sony and Toshiba alone bar AMD from a third of the world market and
12 half of U.S. domestic sales. Intel’s economic coercion and fidelity rebates have foreclosed AMD
13 from an appreciable share of the remainder.

14 • AMD’s Athlon64 is widely recognized as fully competitive with Intel’s best desktop
15 offering with the added benefit that it can run 64-bit software. Nonetheless, with the exception of a
16 channel-restricted HP machine and a single Fujitsu-Siemens’ model, AMD has failed to get a
17 single major OEM – which collectively dominate the lucrative commercial desktop sector – to
18 launch broadly an Athlon64 commercial desktop. Fortune 500 companies won’t take a chance on
19 AMD unless it partners with a Tier One desktop OEM, but Intel’s exclusionary conduct, including
20 its economic coercion of Dell, HP, IBM, Gateway and Acer, prevents that from happening. As a
21 result, AMD’s commercial desktop share is no greater now than it was in 2002.

22 23 **IX. CLAIMS FOR RELIEF**

24 **First Claim for Relief**

25 **(Violation of Section 1 of the Sherman Act)**

26 134. Plaintiff incorporates and realleges, as though fully set forth herein, each and
27 every allegation set forth in the preceding paragraphs of this complaint.
28

135. Beginning at a time presently unknown to Plaintiff, but at least as early as June 28, 2001, and continuing thereafter at least up to and including the present, the exact dates being unknown to Plaintiff, Defendant and various co-conspirators entered into a continuing agreement, understanding, and conspiracy in restraint of trade to artificially raised, fix, maintain, and/or stabilize prices for microprocessors in the United States in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

136. In formulating and carrying out the alleged agreement, understanding, and conspiracy, the Defendant and its co-conspirators did those things that they combined and conspired to do, including but not limited to the acts, practices and course of conduct set forth above, and the following, among others:

- a. To fix, raise, maintain and stabilize the price of microprocessors;
- b. To allocate markets for microprocessors among themselves;
- c. To submit rigged bids for the award and performance of certain microprocessors contracts; and
- d. To allocate among themselves the production of microprocessors.

137. The combination and conspiracy alleged herein has had the following effects, among others:

- a. Price competition in the sale of microprocessors has been restrained, suppressed, and/or eliminated in the United States;
- b. Prices for microprocessors sold by Defendant and its co-conspirators have been fixed, raised, maintained and stabilized at artificially high, non-competitive levels throughout the United States; and
- c. Those who purchased microprocessors directly or indirectly from Defendant and its co-conspirators have been deprived of the benefits of free and open competition.

138. Plaintiff has been injured and will continue to be injured in his business and property by paying more for microprocessors purchased indirectly from the Defendant and various co-conspirators than they would have paid and will pay in the absence of the combination and

1 conspiracy, including paying more for personal computers and other products in which
2 microprocessors are a component as a result of higher prices paid for microprocessors by the
3 manufacturers of those products.

4 139. Plaintiff and the Class are entitled to injunction against Defendant, preventing and
5 restraining the violations alleged herein.

6 **Second Claim for Relief**

7 **(Violations of the California Cartwright Act)**

8 140. Plaintiff incorporates and realleges, as though fully set forth herein, each and every
9 allegation set forth in the preceding paragraphs of this Complaint.

10 141. Defendant's contract, combination, trust or conspiracy was centered in, carried out,
11 effectuated and perfected mainly within the State of California, and Defendant's conduct within
12 California injured all members of the Class throughout the United States. Therefore, this claim for
13 relief under California law is brought on behalf of all members of the Class, whether or not they
14 are California residents.

15 142. Beginning at a time presently unknown to Plaintiff, but at least as early for years
16 from the filing of this complaint, and continuing thereafter up to today, Defendant and its co-
17 conspirators entered into and engaged in a continuing unlawful trust in restraint of the trade and
18 commerce described above in violation of Section 16720, California Business and Professional
19 Code. Defendant, and each of them, have acted in violation of Section 16720 to fix, raise, stabilize
20 and maintain prices of, and allocate markets for, microprocessors at supra-competitive levels.

21 143. The aforesaid violations of Section 16720, California Business and Professions
22 Code, consisted, without limitation, of a continuing unlawful trust and concert of action among the
23 Defendant and its co-conspirators, the substantial terms of which were to fix, raise, maintain and
24 stabilize the prices of, and to allocate markets for, microprocessors.

25 144. For the purpose of forming and effectuating the unlawful trust, the Defendant and its
26 co-conspirators have done those things which they combined and conspired to do, including but in
27 no way limited to the acts, practices and course of conduct set forth above and the following:

- 28 a. to fix, raise, maintain and stabilize the price of microprocessors;

- b. to allocate markets for microprocessors amongst themselves;
- c. to submit rigged bids for the award and performance of certain microprocessors contracts; and
- d. to allocate amongst themselves the production of microprocessors.

145. The combination and conspiracy alleged herein has had, *inter alia*, the following effects:

- a. price competition in the sale of microprocessors has been restrained, suppressed and/or eliminated in the State of California and throughout the United States;
- b. prices for microprocessors sold by Defendant and its co-conspirators have been fixed, raised, maintained and stabilized at artificially high, non-competitive levels in the States of California and throughout the United States; and
- c. those who purchased microprocessors from Defendant and its co-conspirators have been deprived of the benefit of free and open competition.

146. Plaintiff and the other members of the Class paid supra-competitive, artificially inflated prices for microprocessors.

147. As a direct and proximate result of Defendant's unlawful conduct, Plaintiff and the members of the Class have been injured in their business and property in that they paid more for microprocessors than they otherwise would have paid in the absence of Defendant's unlawful conduct. As a result of Defendant's violation of Section 16720 of the California Business and Professions Code, Plaintiff seeks treble damages and the costs of suit, including reasonable attorneys' fees, pursuant to Section 16750(a) of the California Business and Professions Code.

Third Claim for Relief

(Violations of the California Unfair Competition Law)

148. Plaintiff incorporates and realleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

149. Defendant's business acts and practices were centered in, carried out, effectuated and perfected mainly within the State of California, and Defendant's conduct within California injured all members of the Class throughout the United States. Therefore, this claim for relief

1 under California law is brought on behalf of all members of the Class, whether or not they are
2 California residents.

3 150. Beginning on a date unknown to Plaintiff, but at least as early as June 28, 2001, and
4 continuing thereafter at least up through and including the present, Defendant committed and
5 continue to commit acts of unfair competition, as defined by Sections 17200, *et seq.* of the
6 California Business and Professions Code, by engaging in the acts and practices specified above.

7 151. This Claim is instituted pursuant to Sections 17203 and 17204 of the California
8 Business and Professions Code, to obtain restitution from the Defendant for acts, as alleged herein,
9 that violated Section 17200 of the California Business and Professions Code, commonly known as
10 the Unfair Competition Law.

11 152. The Defendant's conduct as alleged herein violated Section 17200. The acts,
12 omissions, misrepresentations, practices and non-disclosure of Defendant, as alleged herein,
13 constitute a common continuous and continuing course of conduct of unfair competition by means
14 of unfair, unlawful and/or fraudulent business acts or practices within the meaning of California
15 Business and Professions Code, Section 17200, *et seq.*, including, but not limited to, the following:

- 16 a. The violations of Section 1 of the Sherman Act, as set forth above;
 - 17 b. The violations of Section 16720, *et seq.*, of the California Business and
18 Professions Code, set above;
 - 19 c. Defendant's acts, omissions, misrepresentations, practices and non-
20 disclosures, as described above, whether or not in violation of Section 16720, *et seq.* of the
21 California Business and Professions Code, and whether or not concerted or independent acts, are
22 otherwise unfair, unconscionable, unlawful or fraudulent.
 - 23 d. Defendant's act and practices are unfair to consumers of microprocessors in
24 the State of California and throughout the United States, within the meaning of Section 17200,
25 California Business and Professions Code; and
 - 26 e. Defendant's acts and practices are fraudulent or deceptive within the
27 meaning of Section 17200 of the California Business and Professions Code.
- 28

153. Plaintiff and each of the Class members are entitled to full restitution and/or disgorgement of all revenues, earnings, profits, compensation and benefits which may have been obtained by Defendant as a result of such business acts or practices.

154. The illegal conduct alleged herein is continuing and there is no indication that Defendant will not continue such activity into the future.

155. The unlawful and unfair business practices of Defendant, as described above, have caused and continue to cause Plaintiff and the members of the Class to pay supra-competitive and artificially-inflated prices for microprocessors. Plaintiff and the members of the Class suffered injury in fact and lost money or property as a result of such unfair competition.

156. The conduct of Defendant as alleged in this Complaint violates Section 17200 of the California Business and Professions Code.

157. As alleged in this Complaint, Defendant and its co-conspirators have been unjustly enriched as a result of their wrongful conduct and by Defendant's unfair competition. Plaintiff and the members of the Class are accordingly entitled to equitable relief including restitution and/or disgorgement of all revenues, earnings, profits, compensation and benefits which may have been obtained by Defendant as a result of such business practices, pursuant to the California Business and Professions Code, Sections 17203 and 17204.

Fourth Claim for Relief

(Violations of State Antitrust and Unfair Competition Laws)

158. Plaintiff incorporates and realleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

159. Should California law not be applied by reason of the foregoing, Defendant has entered into agreements in restraint of trade in violation of Alabama Code §§ 8-10-1 *et seq.*

160. By reason of the foregoing, Defendant has entered into agreements in restraint of trade in violation of Arizona Revised Stat. Code §§ 44-1401 *et seq.*

161. By reason of the foregoing, Defendant has entered into agreements in restraint of trade in violation of California Bus. & Prof. Code §§ 16700 *et seq.* and Cal. Bus. & Prof. Code §§ 17200 *et seq.*

1 162. By reason of the foregoing, Defendant has entered into agreements in restraint of
2 trade in violation of District of Columbia Code Ann. §§ 28-4503 *et seq.*

3 163. By reason of the foregoing, Defendant has entered into agreements in restraint of
4 trade in violation of Iowa Code §§ 553.1 *et seq.*

5 164. By reason of the foregoing, Defendant has entered into agreements in restraint of
6 trade in violation of Kansas Stat. Ann. §§ 50-101 *et seq.*

7 165. By reason of the foregoing, Defendant has entered into agreements in restraint of
8 trade in violation of Maine Rev. Stat. Ann. 10, §§ 1101 *et seq.*

9 166. By reason of the foregoing, Defendant has entered into agreements in restraint of
10 trade in violation of Michigan Comp. Laws. Ann. §§ 445.773 *et seq.*

11 167. By reason of the foregoing, Defendant has entered into agreements in restraint of
12 trade in violation of Minnesota Stat. §§ 325D.52 *et seq.*

13 168. By reason of the foregoing, Defendant has entered into agreements in restraint of
14 trade in violation of Mississippi Code Ann. § 75.21.1 *et seq.*

15 169. By reason of the foregoing, Defendant has entered into agreements in restraint of
16 trade in violation of Nebraska Rev. Stat. §§ 59-801 *et seq.*

17 170. By reason of the foregoing, Defendant has entered into agreements in restraint of
18 trade in violation of Nevada Rev. Stat. Ann. §§ 598A *et seq.*

19 171. By reason of the foregoing, Defendant has entered into agreements in restraint of
20 trade in violation of New Mexico Stat. Ann. §§ 57-1-1 *et seq.*

21 172. By reason of the foregoing, Defendant has entered into agreements in restraint of
22 trade in violation of North Carolina Gen. Stat. §§ 75-1 *et seq.*

23 173. By reason of the foregoing, Defendant has entered into agreements in restraint of
24 trade in violation of North Dakota Cent. Code §§ 51-08.1-01 *et seq.*

25 174. By reason of the foregoing, Defendant has entered into agreements in restraint of
26 trade in violation of Ohio Rev. Code Ann. §§ 1331.01 *et seq.*

27 175. By reason of the foregoing, Defendant has entered into agreements in restraint of
28 trade in violation of Pennsylvania common law.

176. By reason of the foregoing, Defendant has entered into agreements in restraint of trade in violation of South Dakota Codified Laws Ann. §§ 37-1 *et seq.*

177. By reason of the foregoing, Defendant has entered into agreements in restraint of trade in violation of Tennessee Code Ann. §§ 47-25-101 *et seq.*

178. By reason of the foregoing, Defendant has entered into agreements in restraint of trade in violation of Vermont Stat. Ann. 9 §§ 2453 *et seq.*

179. By reason of the foregoing, Defendant has entered into agreements in restraint of trade in violation of West Virginia §§ 47-18-1 *et seq.*

180. By reason of the foregoing, Defendant has entered into agreements in restraint of trade in violation of Wisconsin Stat. §§ 133.01 *et seq.*

181. Class members in each of the states listed above paid supra-competitive, artificially inflated prices for microprocessors. As a direct and proximate result of Defendant's unlawful conduct, such members of the Class have been injured in their business and property in that they paid more for microprocessors than they otherwise would have paid in the absence of Defendant's unlawful conduct.

Fifth Claim for Relief

(Unjust Enrichment and Disgorgement of Profits)

182. Plaintiff incorporates and realleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

183. Defendant has been unjustly enriched through overpayments by Plaintiff and Class members and the resulting profits.

184. Under common law principles of unjust enrichment, Defendant should not be permitted to retain the benefits conferred via overpayments by Plaintiff and Class members.

185. Plaintiff seeks disgorgement of all profits resulting from such overpayments and establishment of a constructive trust from which Plaintiff and Class members may seek restitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays:

1 A. That the Court determine that the Sherman Act, state antitrust law, and state
2 consumer protection and/or unfair competition law claims alleged herein may be maintained as a
3 class action under Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure;

4 B. That the unlawful conduct, contract, conspiracy or combination alleged herein the
5 adjudged and decreed to be:

6 a. A restraint of trade or commerce in violation of Section 1 of the Sherman
7 Act, as alleged in the First Claim for Relief;

8 b. An unlawful combination, trust, agreement, understanding, and/or concert of
9 action in violation of the state antitrust laws identified in the Second and Fourth Claims for Relief
10 herein;

11 c. Violations of the state consumer protection and unfair competition laws
12 identified in the Third Claim for Relief herein; and

13 d. Acts of unjust enrichment as set forth in the Fifth Claim for Relief herein.

14 C. That Plaintiff and the Class recover damages, as provided by state antitrust laws,
15 and that a joint and several judgment in favor of Plaintiff and the Class be entered against the
16 Defendant in an amount to be trebled in accordance with such laws;

17 D. That Defendant, its affiliates, successors, transferees, assignees, and the officers,
18 directors, partners, agents, and employees thereof, and all other persons acting or claiming to act on
19 their behalf, be permanently enjoined and restrained from in any manner: (1) continuing,
20 maintaining, or renewing the conduct, contract, conspiracy or combination alleged herein, or from
21 entering into any other conspiracy alleged herein, or from entering into any other contract,
22 conspiracy or combination having a similar purpose or effect, and from adopting or following any
23 practice, plan, program, or device having a similar purpose or effect; and (2) communicating or
24 causing to be communicated to any other person engaged in the sale of microprocessors,
25 information concerning bids of competitors;

26 E. That Plaintiff be awarded restitution, including disgorgement of profits obtained by
27 Defendant as a result of its acts of unfair competition and acts of unjust enrichment.
28

1 F. That Plaintiff and members of the Class be awarded pre- and post-judgment interest,
2 and that that interest be awarded at the highest legal rate from and after the date of service of the
3 initial complaint in this action;

4 G. That Plaintiff and members of the Class recover their costs of this suit, including
5 reasonable attorneys' fees as provided by law; and

6 H. That Plaintiff and members of the Class have such other, further, and different relief
7 as the case may require and the Court may deem just and proper under the circumstances.

8
9 **X. DEMAND FOR TRIAL BY JURY**

10 186. Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands trial by jury of all issues so
11 triable under the law.

12 DATED: July 15, 2005.

13 LAW OFFICES OF JEFFREY F. KELLER

14 By _____
15 JEFFREY F. KELLER (Bar No. 148005)

16 KATHLEEN R. SCANLAN (Bar No. 197529)
17 425 Second Street, Suite 500
18 San Francisco, CA 94107
19 Telephone: (415) 543-1305
20 Facsimile: (415) 543-7861
21 Email: jkeller@jfkellerlaw.com

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23
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28 Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

)	
)	
PETER J. NAIGOW)	
Plaintiff(s))	
	)	C 05-02898 JCS
-v-)	
	)	ORDER SETTING INITIAL CASE MANAGEMENT
INTEL CORPORATION	)	CONFERENCE
Defendant(s))	
)	

IT IS HEREBY ORDERED that this action is assigned to the Honorable Joseph C. Spero. When serving the complaint or notice of removal, the plaintiff or removing defendant must serve on all other parties a copy of this order, the handbook entitled "Dispute Resolution Procedures in the Northern District of California," the Notice of Assignment to United States Magistrate Judge for Trial, and all other documents specified in Civil Local Rule 4-2. Counsel must comply with the case schedule listed below unless the Court otherwise orders.

IT IS FURTHER ORDERED that this action is assigned to the Alternative Dispute Resolution (ADR) Multi-Option Program governed by ADR Local Rule 3. Counsel and clients must familiarize themselves with that rule and with the handbook entitled "Dispute Resolution Procedures in the Northern District of California."

CASE SCHEDULE [ADR MULTI-OPTION PROGRAM]

Date	Event	Governing Rule
07/15/2005	Complaint filed	
10/28/2005	Last day to meet and confer re initial disclosures, early settlement, ADR process selection, and discovery plan	FRCivP 26(f) & ADR LR 3-5
10/28/2005	Last day to file Joint ADR Certification with Stipulation to ADR process or Notice of Need for ADR Phone Conference	Civil L.R. 16-8
11/14/2005	Last day to complete initial disclosures or state objection in Rule 26(f) Report, file/serve Case Management Statement, and file/serve Rule 26(f) Report	FRCivP 26(a)(1) Civil L.R.16-9
11/18/2005	Case Management Conference in Ctrm A, 15th Floor, SF at 1:30 PM	Civil L.R. 16-10

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No.

Plaintiff(s),

v.

**CASE MANAGEMENT
CONFERENCE ORDER**

[ALL CASES]

Defendant(s).

IT IS HEREBY ORDERED that, pursuant to Fed. R. Civ. P. 16 and Civil L.R. 16-10, a Case Management Conference will be held in this case before the Honorable Joseph C. Spero on _____, at 1:30 p.m., in Courtroom A, 15th Floor, U.S. District Court, 450 Golden Gate Avenue, San Francisco, California.

1. Plaintiff(s) shall serve copies of this Order and the Court's Standing Orders at once on all parties to this action, and on any parties subsequently joined, in accordance with the provisions of Fed. R. Civ. P. 4 and 5. Following service, plaintiff(s) shall file a certificate of service with the Clerk of this Court.

2. Counsel are directed to confer in advance of the Case Management Conference with respect to the subjects detailed in Fed. R. Civ. P. 16(c), 26(f), and all of the agenda items listed below. Not less than seven (7) days before the conference, counsel shall file a Joint Case Management Conference Statement in compliance with Local Rule 16-9. In addition, the Joint Case Management Conference Statement shall address each agenda item listed below. Failure to file a Joint Case Management Conference Statement, without good cause, may subject a party to sanctions.

3. Each party shall be represented at the Case Management Conference by counsel (or a party if *in pro se*) prepared to address all of the matters referred to in this Order, and with authority to enter stipulations and make admissions pursuant to this Order.

4. Any request to reschedule the above dates should be made in writing, and by stipulation, if possible, not less than ten (10) days before the conference date. Good cause must be shown.

5. The parties should be prepared to address and resolve at the Case Management Conference the matters set forth in Fed. R. Civ. P. 16(b) and (c).

6. Other agenda matters which the Court will address at the Case Management Conference include the following:

a) The basis for this Court's subject matter jurisdiction and whether any issue exists regarding personal jurisdiction or venue;

b) The factual and legal bases for plaintiff's claims, defendant's defenses, defendant's counterclaims and the defenses to those counterclaims;

c) Any related proceedings, including any administrative proceedings, and any related cases pending before other judges of this court or before any other court;

d) Whether all parties consent to the jurisdiction of a Magistrate Judge for all purposes, including trial and entry of judgment;

e) A brief summary of the proceedings to date, including whether or not there has been full compliance with the initial disclosure requirements of Fed. R. Civ. P. 26 and, in patent cases, the schedule for compliance with Patent Local Rules 3-1 through 4-6;

f) A description of all pending motions and their current status;

g) A description of all motions expected before trial;

h) The extent to which new parties will be added or existing parties deleted, deadlines for adding and deleting parties, and deadlines for amendment of pleadings;

i) The extent to which evidentiary, claim construction, or class certification hearings are anticipated;

j) The scope of discovery to date and, separately, the scope of anticipated discovery, including limits that should be imposed on discovery and a proposed discovery plan pursuant to Fed. R. Civ. P. 26(f);

k) The extent to which any special discovery or other problems or issues have arisen or are expected;

l) Proposed deadlines and court dates, including trial date;

m) The expected length of trial, approximate number of witnesses, experts, exhibits, and whether a jury is demanded;

n) What damages and other relief are sought and what method is used to compute such damages;

o) ADR efforts to date and a specific ADR plan for the case;

p) The extent to which a special master should be involved in the case;

q) A service list for all counsel that includes telephone and fax numbers; and

r) Such other matters as any party considers conducive to the just, speedy and inexpensive determination of this action.

7. As soon as a party has notice of this order, the party shall take such affirmative steps as are necessary to preserve evidence related to the issues presented by the action, including, without limitation, interdiction of any document destruction programs and any ongoing erasures of emails, voicemails, and other electronically recorded material to the extent necessary to preserve information relevant to the issues presented by the action.

8. Motions for summary judgment shall be accompanied by a statement of the material facts not in dispute supported by citations to admissible evidence. The parties shall file a joint statement of undisputed facts where possible. If the parties are unable to reach complete agreement after meeting and conferring, they shall file a joint statement of the undisputed facts about which they do agree. Any party may then file a separate statement of the additional facts that the parties contends are undisputed. A party who, without substantial justification, contends that a fact is in dispute is subject to sanctions.

1 9. The remainder of this order will apply to all discovery in this action. For good cause, the
2 parties are invited to propose any modifications in their joint case management statement. Unless and until
3 modified, however, the following provisions shall supplement the requirements of the Federal Rules of Civil
4 Procedure and the local rules.

5 10. Counsel shall contact Judge Spero jointly by telephone before filing any discovery motions.
6 If the Court determines that a formal discovery motion should be filed, counsel are directed to follow the
7 procedures outlined in the Civil Local Rules and in this Order, unless otherwise specified at the time of the
8 telephonic conference.

9 11. Discovery motions may be addressed to the Court in three ways. A motion may be
10 noticed on not less than 35 days notice pursuant to Civil L.R. 7-2. Alternatively, any party may seek an
11 order shortening time under Civil L.R. 6-3 if the circumstances justify that relief. In emergencies during
12 discovery events (such as depositions), the Court is available pursuant to Civil L.R. 37-1(b). In the event a
13 discovery dispute arises, counsel for the party seeking discovery shall in good faith confer **in person** with
14 counsel for the party failing to make the discovery in an effort to resolve the dispute without court action, as
15 required by Fed. R. Civ. P. 37 and Civil L.R. 37-1(a). The meeting must be **in person**, except where
16 good cause is shown why a telephone meeting is adequate. A declaration setting forth these meet and
17 confer efforts, and the final positions of each party, shall be included in the moving papers. The Court will
18 not consider discovery motions unless the moving party has complied with Fed. R. Civ. P. 37 and Civil
19 L.R. 37-1(a).

20 12. In responding to requests for documents and materials under Fed. R. Civ. P. 34, all parties
21 shall affirmatively state in a written response served on all other parties the full extent to which they will
22 produce materials and shall, promptly after the production, confirm in writing that they have produced *all*
23 such materials so described that are locatable after a diligent search of *all* locations at which such materials
24 might plausibly exist. It shall not be sufficient to object and/or to state that “responsive” materials will be or
25 have been produced.

26 13. In searching for responsive materials in connection with Fed. R. Civ. P. 34 requests or for
27 materials required to be disclosed under Fed. R. Civ. P. 26(a)(1), parties must search computerized files,
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1 emails, voicemails, work files, desk files, calendars and diaries, and any other locations and sources if
2 materials of the type to be produced might plausibly be expected to be found there.

3 14. To the maximum extent feasible, all party files and records should be retained and
4 produced in their original form and sequence, including file folders, and the originals should remain available
5 for inspection by any counsel on reasonable notice.

6 15. Except for good cause, no item will be received in evidence if the proponent failed to
7 produce it in the face of a reasonable and proper discovery request covering the item, regardless of
8 whether a motion to overrule any objection thereto was made. Privilege logs shall be promptly provided
9 and must be sufficiently detailed and informative to justify the privilege. *See* Fed. R. Civ. P. 26(b)(5). No
10 generalized claims of privilege or work product protection shall be permitted. With respect to each
11 communication for which a claim of privilege or work product is made, the asserting party must at the time
12 of its assertion identify: (a) all persons making and receiving the privileged or protected communication, (b)
13 the steps taken to ensure the confidentiality of the communication, including affirmation that no unauthorized
14 persons have received the communication, (c) the date of the communication, and (d) the subject matter of
15 the communication. Failure to furnish this information at the time of the assertion will be deemed a waiver
16 of the privilege or protection.

17 16. Absent extraordinary circumstances, counsel shall consult in advance with opposing counsel
18 and unrepresented proposed deponents to schedule depositions at mutually convenient times and places.
19 Where an agreement cannot be reached as to any party deponent or a deponent represented by counsel of
20 record, the following procedure may be invoked by the party seeking any such deposition. The party
21 seeking such a deposition may notice it at least thirty (30) days in advance. If the noticed date and place is
22 unacceptable to the deponent or the deponent's counsel, then within ten (10) days or receipt of the notice,
23 the deponent or counsel for the deponent must reply and counter-propose in writing an alternative date and
24 place falling within thirty (30) days of the date noticed by the party seekin/g the deposition.

25 17. Counsel and parties shall comply with Fed. R. Civ. P. 30(d)(1). Deposition objections
26 must be as to privilege or form only. Speaking objections are prohibited. When a privilege is claimed, the
27 witness should nevertheless answer questions relevant to the existence, extent or waiver of the privilege,
28 such as the date of a communication, who made the statement, to whom and in whose presence the

1 statement was made, other persons to whom the contents of the statement have been disclosed, and the
2 general subject matter of the statement, unless such information is itself privileged. Private conferences
3 between deponents and attorneys in the course of interrogation, including a line of related questions, are
4 improper and prohibited except for the sole purpose of determining whether a privilege should be asserted.

5 18. Failure to comply with this Order or the Local Rules of this Court may result in sanctions.
6 See Fed. R. Civ. P. 16(f), Civil L.R. 1-4.

7 IT IS SO ORDERED.

8
9 Dated: January 30, 2001

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JOSEPH C. SPERO
United States Magistrate Judge
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STANDING ORDER

1. Civil Law and Motion is heard on Fridays, at 9:30 a.m. Criminal Law and Motion is heard on Fridays, at 10:30 a.m. Counsel need not reserve a hearing date in advance for civil motions. However, noticed dates may be reset as the Court's calendar requires.

2. Case Management and Pretrial Conferences are heard on Fridays, at 1:30 p.m. Case Management Conferences will no longer be recorded, unless requested by the parties.

3. In cases that are randomly assigned to Judge Spero for all purposes, a Consent to Proceed before a U.S. Magistrate Judge and a Declination to Proceed Before a Magistrate Judge And Request For Reassignment to a United States District Judge Forms will be mailed to all parties. The parties are requested, within two weeks from receipt of the form, to complete and file the form indicating their consent or request for reassignment to a District Judge.

4. Parties with questions regarding scheduling of settlement conferences should contact Judge Spero's secretary, Mary Ann Macudzinski-Gomez, at (415) 522-3691. All other scheduling questions should be addressed to Judge Spero's courtroom deputy, Karen Hom, at (415) 522-2035.

5. Discovery motions may be addressed to the Court in three ways. A motion may be noticed on not less than thirty-five (35) days notice pursuant to Civil L.R. 7-2. Alternatively, any party may seek an order shortening time under Civil L.R. 6-3 if the circumstances justify that relief. In emergencies during discovery events (such as depositions), the Court is available pursuant to Civil L.R. 37-1(b). In the event a discovery dispute arises, counsel for the party seeking discovery shall in good faith confer **in person** with counsel for the party failing to make the discovery in an effort to resolve the dispute without court action, as required by Fed. R. Civ. P. 37 and Civil L.R. 37-1(a). The meeting must be **in person**, except where good cause is shown why a telephone meeting is adequate. A declaration setting forth these meet and confer efforts and the final positions of each

1 party shall be included in the moving papers. The Court will not consider discovery motions unless the
2 moving party has complied with Fed. R. Civ. P. 37 and Civil L.R. 37-10(a).

3
4 6. In all “e-filing” cases, when filing papers in connection with any motion for
5 determination by a judge, the parties shall, in addition to filing papers electronically, lodge with
6 chambers a printed copy of the papers by the close of the next court day following the day the papers
7 are filed electronically. **These printed copies shall be marked “Chambers Copy” and shall be**
8 **submitted directly to Magistrate Judge Spero’s chambers in an envelope clearly marked with**
9 **the judge’s name, case number and “E-Filing Chambers Copy.” Parties shall not file a paper**
10 **copy of any document with the Clerk’s Office that has already been filed electronically.**

11
12 7. Any proposed stipulation or proposed order in a case subject to electronic filing shall
13 be sent by email to jcsपो@cand.uscourts.gov. This address is to be used only for proposed orders
14 unless otherwise directed by the Court.

15 IT IS SO ORDERED.

16
17 Dated: February 26, 2003

18 /s/ Joseph C. Spero
19 JOSEPH C. SPERO
20 United States Magistrate Judge
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NO
PDF
FOR THIS
EVENT

LAW OFFICES OF JEFFREY F. KELLER
425 Second Street, Suite 500
San Francisco, CA 94107
Telephone: (415) 296-8892

ATTORNEY(S) FOR: Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PETER JON NAIGOW

Plaintiff,

V.

INTEL CORPORATION

Defendant.

CASE NUMBER

C 05-2898 JCS

DECLARATION OF SERVICE

At the time of service I was a citizen of the United States, over the age of eighteen, and not a party to this action; I served copies of the:

SUMMONS IN A CIVIL CASE; CIVIL COVER SHEET; CLASS ACTION COMPLAINT; NOTICE OF PENDENCY OF OTHER ACTION OR PROCEEDING; ECF REGISTRATION INFORMATION HANDOUT; WELCOME TO THE U.S. DISTRICT COURT, SAN FRANCISCO; DISPUTE RESOLUTION PROCEDURES; NOTICE OF ASSIGNMENT OF CASE TO A UNITED STATES MAGISTRATE JUDGE FOR TRIAL; ORDER SETTING INITIAL CASE MANAGEMENT CONFERENCE

in the within action by personally delivering true copies thereof to the person served as follows:

Served : INTEL CORPORATION

By serving : Gerome Jones, Authorized Agent

Address : C.T. Corporation System
818 W. 7th Street
Los Angeles, CA 90017

Date of Service : July 18, 2005

Time of Service : 2:25 PM

I declare under penalty of perjury under the laws of the United States of America that the foregoing information is true and correct.

Date: July 18, 2005

SPECIALIZED LEGAL SERVICES
1112 Bryant Street, Suite 200
San Francisco, CA 94103
Telephone: (415) 357-0500
Registered Los Angeles
Number 140

Signature: 

PAUL NAGLE

172354

FILED

JUL 27 2005

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RELATED CASE ORDER

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

A Motion for Administrative Relief to Consider Whether Cases Should be Related or a *Sua Sponte* Judicial Referral for Purpose of Determining Relationship (Civil L.R. 3-12) has been filed. The time for filing an opposition or statement of support has passed. As the judge assigned to the earliest filed case below that bears my initials, I find that the more recently filed case(s) that I have initialed below are related to the case assigned to me, and such case(s) shall be reassigned to me. Any cases listed below that are not related to the case assigned to me are referred to the judge assigned to the next-earliest filed case for a related case determination.

C 05-03028 WDB Trotter-Vogel Realty, Inc. -v- Intel Corporation

I find that the above case is related to the case assigned to me. 

C 05-02669 MHP Lipton et al v. Intel Corporation

I find that the above case is related to the case assigned to me. 

C 05-02699 JL Prohlias v. Intel Corporation

I find that the above case is related to the case assigned to me. 

C 05-02700 MHP Konieczka, et al v. Intel Corporation

I find that the above case is related to the case assigned to me. 

C 05-02720 JCS Niehaus v. Intel Corporation

I find that the above case is related to the case assigned to me. 

C 05-02721 JCS Hamilton v. Intel Corporation

I find that the above case is related to the case assigned to me. 

C 05-02743 SC Brauch et al v. Intel Corporation

I find that the above case is related to the case assigned to me. 

C 05-02758 EMC Baxley v. Intel Corporation

I find that the above case is related to the case assigned to me. 

C 05-02813 JL Frazier et al v. Intel Corporation

I find that the above case is related to the case assigned to me. 

C 05-02818 JL Dickerson v. Intel Corporation

I find that the above case is related to the case assigned to me. 

C 05-02823 EDL The Harman Press v. Intel Corporation

I find that the above case is related to the case assigned to me. 

C 05-02830 EDL Shanghai 1930 Restaurant Partners, L.P. v. Intel Corporation

I find that the above case is related to the case assigned to me. 

C 05-02831 EDL Major League Softball, Inc. V. Intel Corporation

I find that the above case is related to the case assigned to me. 

C 05-02834 MHP Allanoff v. Intel Corporation

I find that the above case is related to the case assigned to me. 

C 05-02858 EDL Law Offices of Laurel Stanley et al v. Intel Corporation

I find that the above case is related to the case assigned to me. 

C 05-02859 WHA Lazio Family Products, v. Intel Corporation

I find that the above case is related to the case assigned to me. 

C 05-02882 MEJ Walker v. Intel Corporation

I find that the above case is related to the case assigned to me. 

C 05-02897 EDL Stoltz v. Intel Corporation

I find that the above case is related to the case assigned to me. 

C 05-02898 JCS Naigow v. Intel Corporation

I find that the above case is related to the case assigned to me. 

C 05-02916 SC Hewson v. Intel Corporation

I find that the above case is related to the case assigned to me. 

C 05-02957 MEJ Lang v. Intel Corporation

I find that the above case is related to the case assigned to me. 

ORDER

Counsel are instructed that all future filings in any reassigned case are to bear the initials of the newly assigned judge immediately after the case number. Any case management conference in any reassigned case will be rescheduled by the Court. The parties shall adjust the dates for the conference, disclosures and report required by FRCivP 16 and 26 accordingly. Unless otherwise ordered, any dates for hearing noticed motions are vacated and must be re-noticed by the moving party before the newly assigned judge; any deadlines set by the ADR Local Rules remain in effect; and any deadlines established in a case management order continue to govern, except dates for appearance in court, which will be rescheduled by the newly assigned judge.

Dated: 7/27/05



Judge Marilyn H. Patel

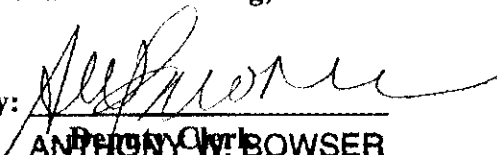
Dated: _____

CLERK'S NOTICE

The court has reviewed the motion and determined that no cases are related and no reassignments shall occur.

Richard W. Wicking, Clerk

DATED: 7/27/05

By: 
ANTHONY W. BOWSER

Bingham McCutchen LLP
DAVID M. BALABANIAN (SBN 37368)
CHRISTOPHER B. HOCKETT (SBN 121539)
JOY K. FUYUNO (SBN 193890)
Three Embarcadero Center
San Francisco, CA 94111-4067
Telephone: (415) 393-2000
Facsimile: (415) 393-2286

Attorneys for Defendant
Intel Corporation

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NAIGOW, et al., on behalf of itself and all others
similarly situated,

Plaintiffs,

v.

INTEL CORPORATION, a Delaware
corporation,

Defendant.

No. C 05 2898 MHP

NOTICE OF APPEARANCE

TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO THE ATTORNEYS FOR
PLAINTIFF(S) IN THIS ACTION:

PLEASE TAKE NOTICE THAT David M. Balabanian, Christopher B. Hockett
and Joy K. Fuyuno, of Bingham McCutchen LLP, Three Embarcadero Center, Suite 1800, San
Francisco, CA 94111, members of the State Bar of California admitted to practice before this
Court, have been retained by, and hereby appear as counsel for, Defendant Intel Corporation. In
addition, Richard A. Ripley, of Bingham McCutchen LLP, 1120 20th Street, NW, Suite 800,
Washington, DC 20036, member of the Bar of the District of Columbia and the State Bar of

///

1 Pennsylvania, will apply to appear *pro hac vice* in this action as counsel on behalf of Defendant
2 Intel Corporation.

3 DATED: July 28, 2005

4
5 Bingham McCutchen LLP

6
7 By: /s/ Joy K. Fuyuno
8 Joy K. Fuyuno
9 Attorneys for Defendant
Intel Corporation

Bingham McCutchen LLP
DAVID M. BALABANIAN (SBN 37368)
CHRISTOPHER B. HOCKETT (SBN 121539)
JOY K. FUYUNO (SBN 193890)
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San Francisco, CA 94111-4067
Telephone: (415) 393-2000
Facsimile: (415) 393-2286

Attorneys for Defendant
Intel Corporation

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PETER JON NAIGOW, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

INTEL CORPORATION, a Delaware
corporation,

Defendant.

No. C-05-2898-MHP

STIPULATION AND [PROPOSED]
ORDER TO CONTINUE FILING DATE
FOR DEFENDANT'S RESPONSE TO
PLAINTIFF'S COMPLAINT

IT IS STIPULATED BY AND BETWEEN THE PARTIES, THROUGH THEIR
COUNSEL AS FOLLOWS:

Pursuant to Civil Local Rule 6-2, Plaintiff Peter Jon Naigow and Defendant Intel Corporation hereby stipulate that Intel Corporation's response to Plaintiff's complaint shall be due either 60 days after transfer of the above captioned case pursuant to any motion to coordinate or consolidate pre-trial proceedings per 28 U.S.C. Section 1407 or, in the alternative, 45 days after any such motion has been denied. The parties request this transfer because the plaintiffs in *Brauch, et al. v. Intel Corp.*, No. C 05-2743 (BZ) (N.D. Cal., filed July 5, 2005), a related matter,

1 have filed a petition to coordinate or consolidate pre-trial proceedings per 28 U.S.C. Section
2 1407, and the above-styled action has been identified as a related action to that petition. As a
3 result, the outcome of the pending petition will impact significantly the schedule of this case.

4 This is the first stipulation between the parties. Because this litigation has just
5 begun, granting such a stipulation will not have any negative impact on the schedule of this case.

6 IT IS HEREBY STIPULATED.
7 DATED: July __, 2005

8 Bingham McCutchen LLP

9
10
11 By: _____
12 JOY K. FUYUNO
13 Attorneys for Defendant
14 Intel Corporation

15 Law Offices of Jeffrey F. Keller

16
17 By: _____
18 JEFFREY F. KELLER
19 Attorneys for Plaintiff
20 Peter Jon Naigow
21
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[PROPOSED] ORDER TO CONTINUE DEFENDANT'S RESPONSE DATE

IT IS HEREBY ORDERED that Defendant Intel Corporation's response to Plaintiff's complaint shall be due either 60 days after transfer of the above captioned case pursuant to any motion to coordinate or consolidate pre-trial proceedings per 28 U.S.C. Section 1407, or, in the alternative, 45 days after any such motion has been denied.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _____, 2005

Honorable Marilyn Hall Patel
United States District Judge

1 have filed a petition to coordinate or consolidate pre-trial proceedings per 28 U.S.C. Section
2 1407, and the above-styled action has been identified as a related action to that petition. As a
3 result, the outcome of the pending petition will impact significantly the schedule of this case.

4 This is the first stipulation between the parties. Because this litigation has just
5 begun, granting such a stipulation will not have any negative impact on the schedule of this case.

6 IT IS HEREBY STIPULATED.
7 DATED: July 20, 2005

8

Bingham McCutchen LLP

9

10

11

By: 

JOY K. FUYUNO
Attorneys for Defendant
Intel Corporation

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Law Offices of Jeffrey F. Keller

16

17

By: 

JEFFREY F. KELLER
Attorneys for Plaintiff
Peter Jon Naigow

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FILED

AUG - 3 2005

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 Bingham McCutchen LLP
DAVID M. BALABANIAN (SBN 37368)
2 CHRISTOPHER B. HOCKETT (SBN 121539)
JOY K. FUYUNO (SBN 193890)
3 Three Embarcadero Center
San Francisco, CA 94111-4067
4 Telephone: (415) 393-2000
Facsimile: (415) 393-2286

5 Attorneys for Defendant
6 Intel Corporation

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 PETER JON NAIGOW, individually and on
behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 INTEL CORPORATION, a Delaware
corporation,

16 Defendant.
17

No. C-05-2898-MHP

STIPULATION AND [PROPOSED]
ORDER TO CONTINUE FILING DATE
FOR DEFENDANT'S RESPONSE TO
PLAINTIFF'S COMPLAINT

18 IT IS STIPULATED BY AND BETWEEN THE PARTIES, THROUGH THEIR
19 COUNSEL AS FOLLOWS:

20 Pursuant to Civil Local Rule 6-2, Plaintiff Peter Jon Naigow and Defendant Intel
21 Corporation hereby stipulate that Intel Corporation's response to Plaintiff's complaint shall be
22 due either 60 days after transfer of the above captioned case pursuant to any motion to coordinate
23 or consolidate pre-trial proceedings per 28 U.S.C. Section 1407 or, in the alternative, 45 days
24 after any such motion has been denied. The parties request this transfer because the plaintiffs in
25 *Brauch, et al. v. Intel Corp.*, No. C 05-2743 (BZ) (N.D. Cal., filed July 5, 2005), a related matter,
26

STIPULATION AND [PROPOSED] ORDER TO CONTINUE RESPONSE DATE

1 have filed a petition to coordinate or consolidate pre-trial proceedings per 28 U.S.C. Section
2 1407, and the above-styled action has been identified as a related action to that petition. As a
3 result, the outcome of the pending petition will impact significantly the schedule of this case.

4 This is the first stipulation between the parties. Because this litigation has just
5 begun, granting such a stipulation will not have any negative impact on the schedule of this case.

6 IT IS HEREBY STIPULATED.
7 DATED: July __, 2005

8 Bingham McCutchen LLP

9
10
11 By: _____
12 JOY K. FUYUNO
13 Attorneys for Defendant
14 Intel Corporation

15 Law Offices of Jeffrey F. Keller

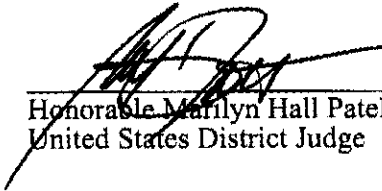
16
17 By: _____
18 JEFFREY F. KELLER
19 Attorneys for Plaintiff
20 Peter Jon Naigow

[PROPOSED] ORDER TO CONTINUE DEFENDANT'S RESPONSE DATE

IT IS HEREBY ORDERED that Defendant Intel Corporation's response to Plaintiff's complaint shall be due either 60 days after transfer of the above captioned case pursuant to any motion to coordinate or consolidate pre-trial proceedings per 28 U.S.C. Section 1407, or, in the alternative, 45 days after any such motion has been denied.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: 8/2, 2005


Honorable Marilyn Hall Patel
United States District Judge

BINGHAM McCUTCHEN LLP
DAVID M. BALABANIAN (SBN 37368)
CHRISTOPHER B. HOCKETT (SBN 121539)
JOY K. FUYUNO (SBN 193890)
Three Embarcadero Center
San Francisco, California 94111-4067
Telephone: (415) 393-2000

Attorneys for Defendant
Intel Corporation

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PETER JON NAIGOW, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

INTEL CORPORATION,

Defendant.

No. 05-2898

DEFENDANT INTEL
CORPORATION'S FED. R. CIV.
PROC. 7.1 AND CIVIL L.R. 3-16
DISCLOSURE STATEMENTS

1 Pursuant to Rule 7.1, Federal Rules of Civil Procedure, the undersigned certifies
2 that there is no parent company and no publicly held entity that owns 10% or more of Intel.

3 Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other
4 than the named parties, there is no such interest to report.

5 DATED: August 26, 2005

6 BINGHAM McCUTCHEN LLP

7
8 By: /s/ Joy K. Fuyuno
9 Joy K. Fuyuno
10 Attorneys for Defendant
11 Intel Corporation
12
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JEFFREY F. KELLER (148005)
JADE BUTMAN (235920)
KELLER GROVER LLP
425 Second Street, Suite 500
San Francisco, CA 94107
Telephone: (415) 543-1305
Facsimile: (415) 543-7861

Attorneys for Plaintiff
Peter Jon Naigow

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PETER JON NAIGOW, individually and on behalf of all others similarly situated,	)	Case No. C 05-2898 (MHP)
)	
Plaintiff,)	
v.	)	STIPULATION AND [PROPOSED]
	)	ORDER TO STAY DATES, EVENTS AND
INTEL CORPORATION, a Delaware	)	DEADLINES PENDING THE OUTCOME
Corporation,	)	OF THE MOTION TO TRANSFER AND
	)	COORDINATE OR CONSOLIDATE
Defendant.	)	PURSUANT TO 28 U.S.C. § 1407
)	
)	

WHEREAS, on July 15, 2005, Plaintiff filed the instant action in the Northern District of California ("Naigow Action");

WHEREAS, on or about July 11, 2005, the plaintiffs in Brauch, et al. v. Intel Corp., No. C 05-2743 (BZ) (N. D. Cal., filed July 5, 2005), a related matter, moved before the Judicial Panel on Multi-District Litigation ("MDL"), to transfer and coordinate or consolidate for pre-trial proceedings pursuant to 28 U.S.C. § 1407 ("MDL Motion"), and the Naigow Action has been identified as a related action to that motion;

WHEREAS, on or about July 27, 2005, Judge Patel issued a Related Case Order relating this case to an earlier filed case assigned to her, and canceling or staying certain but not

all dates, events and deadlines in the action;

WHEREAS, to date, a decision has not been rendered on the MDL Motion;

WHEREAS, the outcome of the MDL Motion will impact significantly the schedule of this case;

THEREFORE, IT IS HEREBY STIPULATED, pursuant to Civil Local Rule 6-2, by and among counsel for Plaintiff Naigow, and counsel for Defendant Intel Corporation, that any events, dates or deadlines set by the Local Rules or the Federal Rules of Civil Procedure, including the Local Rules for Alternative Dispute Resolution (“ADR Local Rules”) and Federal Rules of Civil Procedure 16 and 26, and any deadlines established in any case management order applicable to this case should likewise be stayed pending the outcome of the aforementioned MDL Motion; and

IT IS FURTHER STIPULATED by the aforementioned parties that if a case management conference is rescheduled by the Court, the parties shall adjust the dates for any conference, disclosures or reports required by the Local Rules or the Federal Rules of Civil Procedure, including the ADR Local Rules and Federal Rules of Civil Procedure 16 and 26 accordingly.

IT IS HEREBY STIPULATED.

Dated: October 28, 2005

Keller Grover LLP

By: /s/ Jeffrey F. Keller

JEFFREY F. KELLER

Attorneys for Plaintiff Naigow

Bingham McCutchen LLP

By: /s/ Joy Fuyuno

JOY K. FUYUNO

Attorneys for Defendant
Intel Corporation

**[PROPOSED] ORDER TO STAY DATES, EVENTS AND DEADLINES
PENDING THE OUTCOME OF THE MDL MOTION**

Any events, dates or deadlines set by the Local Rules or the Federal Rules of Civil Procedure, including the Local Rules for Alternative Dispute Resolution (“ADR Local Rules”) and Federal Rules of Civil Procedure 16 and 26, and any deadlines established in any case management order applicable to this case are hereby stayed pending the outcome of the motion to transfer and coordinate or consolidate pursuant to 28 U.S.C. § 1407 (“MDL Motion”).

Upon the determination of the MDL Motion, if it is necessary for the Court to reschedule a case management conference, the parties shall adjust the dates for any conference, disclosures or reports required by the Local Rules or the Federal Rules of Civil Procedure, including the ADR Local Rules and Federal Rules of Civil Procedure 16 and 26 accordingly.

The parties shall notify the Clerk of the Court within 10 days of the decision on the MDL Motion.

IT IS SO ORDERED.

Date: _____

Honorable Marilyn H. Patel
United States District Court Judge

FILED

NOV - 1 2005

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JEFFREY F. KELLER (148005)
JADE BUTMAN (235920)
KELLER GROVER LLP
425 Second Street, Suite 500
San Francisco, CA 94107
Telephone: (415) 543-1305
Facsimile: (415) 543-7861

Attorneys for Plaintiff
Peter Jon Naigow

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PETER JON NAIGOW, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

INTEL CORPORATION, a Delaware
Corporation,

Defendant.

Case No. C 05-2898 (MHP)

**STIPULATION AND ~~[PROPOSED]~~
ORDER TO STAY DATES, EVENTS AND
DEADLINES PENDING THE OUTCOME
OF THE MOTION TO TRANSFER AND
COORDINATE OR CONSOLIDATE
PURSUANT TO 28 U.S.C. § 1407**

WHEREAS, on July 15, 2005, Plaintiff filed the instant action in the Northern
District of California ("Naigow Action");

WHEREAS, on or about July 11, 2005, the plaintiffs in Brauch, et al. v. Intel
Corp., No. C 05-2743 (BZ) (N. D. Cal., filed July 5, 2005), a related matter, moved before the
Judicial Panel on Multi-District Litigation ("MDL"), to transfer and coordinate or consolidate for
pre-trial proceedings pursuant to 28 U.S.C. § 1407 ("MDL Motion"), and the Naigow Action has
been identified as a related action to that motion;

WHEREAS, on or about July 27, 2005, Judge Patel issued a Related Case Order
relating this case to an earlier filed case assigned to her, and canceling or staying certain but not

1 all dates, events and deadlines in the action;

2 WHEREAS, to date, a decision has not been rendered on the MDL Motion;

3 WHEREAS, the outcome of the MDL Motion will impact significantly the
4 schedule of this case;

5 THEREFORE, IT IS HEREBY STIPULATED, pursuant to Civil Local Rule 6-2,
6 by and among counsel for Plaintiff Naigow, and counsel for Defendant Intel Corporation, that
7 any events, dates or deadlines set by the Local Rules or the Federal Rules of Civil Procedure,
8 including the Local Rules for Alternative Dispute Resolution ("ADR Local Rules") and Federal
9 Rules of Civil Procedure 16 and 26, and any deadlines established in any case management order
10 applicable to this case should likewise be stayed pending the outcome of the aforementioned
11 MDL Motion; and

12 IT IS FURTHER STIPULATED by the aforementioned parties that if a case
13 management conference is rescheduled by the Court, the parties shall adjust the dates for any
14 conference, disclosures or reports required by the Local Rules or the Federal Rules of Civil
15 Procedure, including the ADR Local Rules and Federal Rules of Civil Procedure 16 and 26
16 accordingly.

17
18 IT IS HEREBY STIPULATED.

19 Dated: October 28, 2005

20 Keller Grover LLP

21
22 By: /s/ Jeffrey F. Keller

23 JEFFREY F. KELLER

24
25 Attorneys for Plaintiff Naigow

Bingham McCutchen LLP

By: /s/ Joy Fuyuno

JOY K. FUYUNO

Attorneys for Defendant
Intel Corporation

**~~PROPOSED~~ ORDER TO STAY DATES, EVENTS AND DEADLINES
PENDING THE OUTCOME OF THE MDL MOTION**

Any events, dates or deadlines set by the Local Rules or the Federal Rules of Civil Procedure, including the Local Rules for Alternative Dispute Resolution ("ADR Local Rules") and Federal Rules of Civil Procedure 16 and 26, and any deadlines established in any case management order applicable to this case are hereby stayed pending the outcome of the motion to transfer and coordinate or consolidate pursuant to 28 U.S.C. § 1407 ("MDL Motion").

Upon the determination of the MDL Motion, if it is necessary for the Court to reschedule a case management conference, the parties shall adjust the dates for any conference, disclosures or reports required by the Local Rules or the Federal Rules of Civil Procedure, including the ADR Local Rules and Federal Rules of Civil Procedure 16 and 26 accordingly.

The parties shall notify the Clerk of the Court within 10 days of the decision on the MDL Motion.

IT IS SO ORDERED.

Date: _____



Honorable Marilyn H. Patel
United States District Court Judge

BINGHAM McCUTCHEN

Joy K. Fuyuno
Direct Phone: (415) 393-2386
joy.fuyuno@bingham.com

November 17, 2005

Via E-Filing

The Honorable Marilyn H. Patel
United States District Court, Northern District of California
450 Golden Gate Avenue
Courtroom 15, 18th Floor
San Francisco, CA 94102

Bingham McCutchen LLP
Three Embarcadero Center
San Francisco, CA
94111-4067

415.393.2000
415.393.2286 fax

bingham.com

Boston
Hartford
London
Los Angeles
New York
Orange County
San Francisco
Silicon Valley
Tokyo
Walnut Creek
Washington

Re: (1) *Lipton v. Intel Corp.*, No. C-05-2669-MHP; (2) *Prohias v. Intel Corp.*, No. C-05-2699-MHP; (3) *Konieczka v. Intel Corp.*, No. C-05-2700-MHP; (4) *Niehaus v. Intel Corp.*, No. C-05-2720-MHP; (5) *Hamilton v. Intel Corp.*, No. C-05-2721-MHP; (6) *Brauch v. Intel Corp.*, No. C-05-2743-MHP; (7) *Baxley v. Intel Corp.*, No. C-05-2758-MHP; (8) *Frazier v. Intel Corp.*, No. C-05-2813-MHP; (9) *Dickerson v. Intel Corp.*, No. C-05-2818-MHP; (10) *The Harman Press v. Intel Corp.*, No. C-05-2823-MHP; (11) *Shanghai 1930 Restaurant v. Intel Corp.*, No. C-05-2830-MHP; (12) *Benjamin Allanoff v. Intel Corp.*, No. C-05-2834-MHP; (13) *Major League Softball, Inc. v. Intel Corp.*, No. C-05-2831-MHP; (14) *Lazio Family Products v. Intel Corp.*, No. C-05-2859-MHP; (15) *Law Offices Laurel Stanley & Wm. Cronin v. Intel Corp.*, No. C-05-2858-MHP; (16) *Walker v. Intel Corp.*, No. C-05-2882-MHP; (17) *Naigow v. Intel Corp.*, No. C-05-2898-MHP; (18) *Stoltz v. Intel Corp.*, No. C-05-2897-MHP; (19) *Hewson v. Intel Corp.*, No. C-05-2916-MHP; (20) *Lang v. Intel Corp.*, No. C-05-2957-MHP; (21) *Trotter-Vogel Realty, Inc. d/b/a Prudential California Realty v. Intel Corp.*, No. C-05-3028-MHP; (22) *Juskiewicz v. Intel Corp.*, No. C-05-3094-MHP; (23) *Uwakwe, d/b/a/ Tom Cyp Computers v. Intel Corp.*, No. C-05-3197-MHP; (24) *Juan v. Intel Corp.*, No. C-05-3271-MHP; (25) *Dressed to Kill Draperies, LLC, v. Intel Corp.*, No. C-05-3272-MHP; (26) *Kinder v. Intel Corp.*, No. C-05-3273-MHP; (27) *Rush v. Intel Corp.*, No. C-05-3277-MHP

Dear Judge Patel:

Per the stipulations and orders entered in the above captioned cases,¹ I am writing to notify the Court of the MDL transfer order entered November 8, 2005, a copy of which is

¹ Orders were entered in most of the cases staying all dates and requiring notification to the Court of entry of the MDL decision. Stipulations staying all dates pending the MDL decision were filed in all cases except one (*Dickerson*), in which the parties agreed to the terms of the stipulation but which was not yet signed when the MDL decision issued.

Hon. Marilyn H. Patel
November 17, 2005
Page 2

attached. The Judicial Panel on Multidistrict Litigation has ordered that the following 10 actions originally filed in the Northern District of California against Intel Corporation be centralized under 28 U.S.C. § 1407 in the District of Delaware as MDL 1717 (*In re Intel Corp. Microprocessor Antitrust Litigation*):


(1) *Lipton v. Intel Corp.*, No. C-05-2669-MHP; (2) *Prohias v. Intel Corp.*, No. C-05-2699-MHP; (3) *Konieczka v. Intel Corp.*, No. C-05-2700-MHP; (4) *Niehaus v. Intel Corp.*, No. C-05-2720-MHP; (5) *Hamilton v. Intel Corp.*, No. C-05-2721-MHP; (6) *Brauch v. Intel Corp.*, No. C-05-2743-MHP; (7) *Baxley v. Intel Corp.*, No. C-05-2758-MHP; (8) *Frazier v. Intel Corp.*, No. C-05-2813-MHP; (9) *Dickerson v. Intel Corp.*, No. C-05-2818-MHP; and (10) *The Harman Press v. Intel Corp.*, No. C-05-2823-MHP.

Tagalong notices have been filed for the following other 17 Northern District of California actions against Intel, for which conditional transfer orders should be issued soon:

(1) *Shanghai 1930 Restaurant v. Intel Corp.*, No. C-05 2830-MHP; (2) *Benjamin Allanoff v. Intel Corp.*, No. C-05-2834-MHP; (3) *Major League Softball, Inc. v. Intel Corp.*, No. C-05-2831-MHP; (4) *Lazio Family Products v. Intel Corp.*, No. C-05-2859-MHP; (5) *Law Offices Laurel Stanley & Wm. Cronin v. Intel Corp.*, No. C-05-2858-MHP; (6) *Walker v. Intel Corp.*, No. C-05-2882-MHP; (7) *Naigow v. Intel Corp.*, No. C-05-2898-MHP; (8) *Stoltz v. Intel Corp.*, No. C-05-2897-MHP; (9) *Hewson v. Intel Corp.*, No. C-05-2916-MHP; (10) *Lang v. Intel Corp.*, No. C-05-2957-MHP; (11) *Trotter-Vogel Realty, Inc. d/b/a Prudential California Realty v. Intel Corp.*, No. C-05-3028-MHP; (12) *Juskiewicz v. Intel Corp.*, No. C-05-3094-MHP; (13) *Uwakwe, d/b/a/ Tom Cyp Computers v. Intel Corp.*, No. C-05-3197-MHP; (14) *Juan v. Intel Corp.*, No. C-05-3271-MHP; (15) *Dressed to Kill Draperies, LLC, v. Intel Corp.*, No. C-05-3272-MHP; (16) *Kinder v. Intel Corp.*, No. C-05-3273-MHP; (17) *Rush v. Intel Corp.*, No. C-05-3277-MHP.

It is our understanding that the plaintiffs in these tagalong actions will not contest the conditional transfer orders.

Respectfully submitted,



Joy K. Fuyuno
Counsel for Intel Corporation

Attachment

**UNITED STATES OF AMERICA
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

CHAIRMAN:
Judge Wm. Terrell Hodges
United States District Court
Middle District of Florida

MEMBERS:
Judge John F. Keenan
United States District Court
Southern District of New York

Judge D. Lowell Jensen
United States District Court
Northern District of California

Judge J. Frederick Motz
United States District Court
District of Maryland

Judge Robert L. Miller, Jr.
United States District Court
Northern District of Indiana

Judge Kathryn H. Vratil
United States District Court
District of Kansas

Judge David R. Hansen
United States Court of Appeals
Eighth Circuit

DIRECT REPLY TO:

Michael J. Beck
Clerk of the Panel
One Columbus Circle, NE
Thurgood Marshall Federal
Judiciary Building
Room G-255, North Lobby
Washington, D.C. 20002

Telephone: [202] 502-2800
Fax: [202] 502-2888

<http://www.jpml.uscourts.gov>

November 8, 2005

TO INVOLVED COUNSEL

Re: MDL-1717 -- In re Intel Corp. Microprocessor Antitrust Litigation

(See Attached Schedule A of Order)

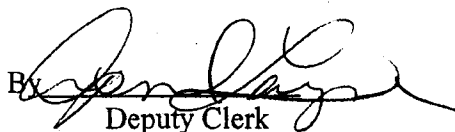
Dear Counsel:

I am enclosing a copy of a Panel transfer order filed today in the above-captioned matter.

The Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425 (2001), and specifically, Rules 1.1, 7.4 and 7.5, refer to "tag-along" actions. Please familiarize yourself with these Rules for your future reference. With regard to Rule 7.5, you need only provide this office with a copy of the complaint which you feel qualifies as a "tag-along" action and informally request that our "tag-along" procedures be utilized to transfer the action to the transferee district. If you have any questions regarding procedures used by the Panel, please telephone this office.

Very truly,

Michael J. Beck
Clerk of the Panel

By 
Deputy Clerk

Enclosure

JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

RELEASED FOR PUBLICATION

NOV - 8 2005

DOCKET NO. 1717

**FILED
CLERK'S OFFICE**

***BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION
IN RE INTEL CORP. MICROPROCESSOR ANTITRUST LITIGATION***

***BEFORE WM. TERRELL HODGES, CHAIRMAN, JOHN F. KEENAN, D.
LOWELL JENSEN, J. FREDERICK MOTZ, ROBERT L. MILLER, JR.,
KATHRYN H. VRATIL AND DAVID R. HANSEN, JUDGES OF THE
PANEL***

TRANSFER ORDER

This litigation currently consists of fourteen actions listed on the attached Schedule A and pending in two districts as follows: ten actions in the Northern District of California and four actions in the District of Delaware.¹ Pursuant to 28 U.S.C. § 1407, plaintiffs in one Northern District of California action originally moved for centralization of this docket in their California district, but they now favor selection of the District of Delaware as transferee forum. Plaintiff in one of the Delaware actions, Advanced Micro Devices, Inc. (AMD), has stated that it does not object to centralization in the District of Delaware, so long as the Panel orders that AMD's action be allowed to proceed on a separate track within the Section 1407 proceedings. All other responding parties, (i.e, plaintiffs in eight of the nine remaining California actions, the plaintiffs in the three remaining Delaware actions, common defendant Intel Corp., and plaintiffs in various District of Delaware and Northern and Southern District of California potential tag-along actions) support centralization without qualification. With but one exception, all of these additional respondents also support designation of the District of Delaware as transferee forum. The lone dissenter on this point is the plaintiff in a Southern District of California potential tag-along action, who favors centralization in his California district.

On the basis of the papers filed and hearing session held, the Panel finds that the actions in this litigation involve common questions of fact, and that centralization under Section 1407 in the District of Delaware will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. All actions involve allegations that common defendant Intel Corp. monopolized and unlawfully maintained a monopoly in the market for the microprocessing chips that serve as the "brains" of most modern computers. Centralization under Section 1407 is necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings (especially with respect

¹The Panel has been notified of additional related actions recently filed in the Northern and Southern Districts of California, the District of Delaware, the Southern District of Florida, and the Eastern and Western Districts of Tennessee. In light of the Panel's disposition of this docket, these actions will be treated as potential tag-along actions. See Rules 7.4 and 7.5, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001).

- 2 -

to class certification matters), and conserve the resources of the parties, their counsel and the judiciary. Transfer under Section 1407 will have the salutary effect of placing all actions in this docket before a single judge who can formulate a pretrial program that: i) allows discovery with respect to any non-common issues to proceed concurrently with discovery on common issues, *In re Joseph F. Smith Patent Litigation*, 407 F.Supp. 1403, 1404 (J.P.M.L. 1976); and ii) ensures that pretrial proceedings will be conducted in a manner leading to a just and expeditious resolution of the actions to the benefit of not just some but all of the litigation's parties. We decline to grant AMD's request to issue specific instructions that could limit the discretion of the transferee court to structure this litigation as it sees fit. As Section 1407 proceedings evolve in the transferee district, AMD may wish to renew its argument that the nature of its claims and/or its status as a litigant would warrant separate tracking for its action within the centralized MDL-1717 proceedings. That argument is one to be addressed to the transferee court, however, and not to the Panel.

In concluding that the District of Delaware is an appropriate forum for this docket, we observe that i) the district is an accessible location that is geographically convenient for many of this docket's litigants and counsel; ii) the district is well equipped with the resources that this complex antitrust docket is likely to require; and iii) the district is the near unanimous choice of all responding parties.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, the actions listed on Schedule A and pending outside the District of Delaware are transferred to that district and, with the consent of that court, assigned to the Honorable Joseph J. Farnan, Jr., for coordinated or consolidated pretrial proceedings with the actions pending there and listed on Schedule A.

FOR THE PANEL:



Wm. Terrell Hodges
Chairman

SCHEDULE A

MDL-1717 -- In re Intel Corp. Microprocessor Antitrust Litigation

Northern District of California

David E. Lipton, et al. v. Intel Corp., C.A. No. 3:05-2669
Maria I. Prohias v. Intel Corp., C.A. No. 3:05-2699
Ronald Konieczka v. Intel Corp., C.A. No. 3:05-2700
Patricia M. Niehaus v. Intel Corp., C.A. No. 3:05-2720
Steve J. Hamilton v. Intel Corp., C.A. No. 3:05-2721
Michael Brauch, et al. v. Intel Corp., C.A. No. 3:05-2743
Susan Baxley v. Intel Corp., C.A. No. 3:05-2758
Huston Frazier, et al. v. Intel Corp., C.A. No. 3:05-2813
Dwight E. Dickerson v. Intel Corp., C.A. No. 3:05-2818
The Harman Press v. Intel Corp., C.A. No. 3:05-2823

District of Delaware

Advanced Micro Devices, Inc., et al. v. Intel Corp., et al., C.A. No. 1:05-441
Jim Kidwell, et al. v. Intel Corp., C.A. No. 1:05-470
Robert J. Rainwater, et al. v. Intel Corp., C.A. No. 1:05-473
Matthew Kravitz, et al. v. Intel Corp., C.A. No. 1:05-476

FILED

JAN - 5 2006

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PETER J. NAIGOW,

No. C 05-02898 MHP

Plaintiff(s),

ORDER

v.

INTEL CORPORATION,

Defendant(s).

This matter having been stayed pending other proceedings, and there being no further reason at this time to maintain the file as an open one for statistical purposes, the Clerk is instructed to submit a JS-6 Form to the Administrative Office.

Nothing contained in this minute entry shall be considered a dismissal or disposition of this action and, should further proceedings in this litigation become necessary or desirable, any party may initiate it in the same manner as if this entry had not been entered.

Dated:


MARILYN HALL PATEL
United States District Judge

FILED

05 JAN 10 PM 12:47

OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

Peter T. Dalleo
CLERK

LOCKBOX 18
844 NORTH KING STREET
BOGGS FEDERAL BUILDING
WILMINGTON, DELAWARE 19801
(302) 573-6170

December 29, 2005

Mr. Richard W. Wieking
Clerk, U.S. District Court
United States District Court
Phillip Burton
United States Courthouse
450 Golden Gate Avenue, Box 36060
San Francisco, CA 94102-3434

RE: **In Re Intel Corporation, Inc., Antitrust Litigation - MDL - 1717**

CA 05-2830 (ND/CA) - **05-894 JJF (D/DE)**
CA 05-2831 (ND/CA) - **05-895 JJF (D/DE)**
CA 05-2834 (ND/CA) - **05-896 JJF (D/DE)**
CA 05-2858 (ND/CA) - **05-897 JJF (D/DE)**
CA 05-2859 (ND/CA) - **05-898 JJF (D/DE)**
CA 05-2882 (ND/CA) - **05-899 JJF (D/DE)**
CA 05-2897 (ND/CA) - **05-900 JJF (D/DE)**
CA 05-2898 (ND/CA) - **05-901 JJF (D/DE)**
CA 05-2916 (ND/CA) - **05-902 JJF (D/DE)**
CA 05-2957 (ND/CA) - **05-903 JJF (D/DE)**
CA 05-3028 (ND/CA) - **05-904 JJF (D/DE)**
CA 05-3094 (ND/CA) - **05-905 JJF (D/DE)**
CA 05-3197 (ND/CA) - **05-906 JJF (D/DE)**
CA 05-3271 (ND/CA) - **05-907 JJF (D/DE)**
CA 05-3272 (ND/CA) - **05-908 JJF (D/DE)**
CA 05-3273 (ND/CA) - **05-909 JJF (D/DE)**
CA 05-3277 (ND/CA) - **05-910 JJF (D/DE)**

Dear Mr. Wieking:

In accordance with 28 U.S.C. § 1407, enclosed is a certified copy of the *Conditional Order of Transfer* issued by the Judicial Panel on Multidistrict Litigation which references the above-captioned case in your District. Kindly forward the complete original file, together with a certified copy of the docket sheet, to the District of Delaware at the following address:

Clerk, U.S. District Court
Federal Building, Lockbox 18
844 N. King St.
Wilmington, DE 19801

If our case file is maintained in electronic format in CM/ECF, please contact Elizabeth Strickler or Monica Mosley at 302-573-6170.

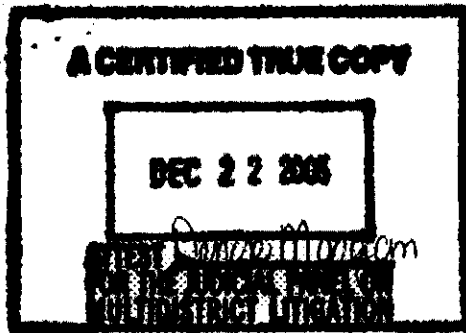
Sincerely,

Peter T. Dalleo, Clerk

By: /s/
Monica Mosley
Deputy Clerk

Enc.

cc: Michael Beck, Clerk of Panel



FILED
 COURT REPORTER
 JUDICIAL PANEL ON
 MULTIDISTRICT LITIGATION
 DOCKET NO. 1717

JUDICIAL PANEL ON
 MULTIDISTRICT LITIGATION
 DEC - 6 2005
 FILED
 CLERK'S OFFICE

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION
IN RE INTEL CORP. MICROPROCESSOR ANTITRUST LITIGATION
(SEE ATTACHED SCHEDULE)

CONDITIONAL TRANSFER ORDER (CTO-1)

On November 8, 2005, the Panel transferred ten civil actions to the United States District Court for the District of Delaware for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. With the consent of that court, all such actions have been assigned to the Honorable Joseph J. Farnan, Jr.

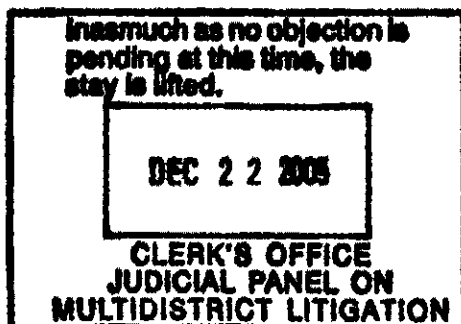
It appears that the actions on this conditional transfer order involve questions of fact which are common to the actions previously transferred to the District of Delaware and assigned to Judge Farnan.

Pursuant to Rule 7.4 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425, 435-36 (2001), these actions are transferred under 28 U.S.C. § 1407 to the District of Delaware for the reasons stated in the order of November 8, 2005, ___ F.Supp.2d ___ (J.P.M.L. 2005), and, with the consent of that court, assigned to the Honorable Joseph J. Farnan, Jr.

This order does not become effective until it is filed in the Office of the Clerk of the United States District Court for the District of Delaware. The transmittal of this order to said Clerk shall be stayed fifteen (15) days from the entry thereof and if any party files a notice of opposition with the Clerk of the Panel within this fifteen (15) day period, the stay will be continued until further order of the Panel.

FOR THE PANEL:

Michael J. Beck
 Michael J. Beck
 Clerk of the Panel



**SCHEDULE CTO-1 - TAG-ALONG ACTIONS
DOCKET NO. 1717
IN RE INTEL CORP. MICROPROCESSOR ANTITRUST LITIGATION**

<u>DIST. DIV. C.A. #</u>	<u>CASE CAPTION</u>
CALIFORNIA NORTHERN	
CAN 3 05-2830	Shanghai 1930 Restaurant Partners, L.P. v. Intel Corp.
CAN 3 05-2831	Major League Softball, Inc. v. Intel Corp.
CAN 3 05-2834	Benjamin Allanoff v. Intel Corp.
CAN 3 05-2858	Law Offices of Laurel Stanley, et al. v. Intel Corp.
CAN 3 05-2859	Lazio Family Products v. Intel Corp.
CAN 3 05-2882	Ian Walker v. Intel Corp.
CAN 3 05-2897	Kevin Stoltz v. Intel Corp.
CAN 3 05-2898	Peter Jon Naigo v. Intel Corp.
CAN 3 05-2916	Patrick J. Hewson v. Intel Corp.
CAN 3 05-2957	Lawrence Lang v. Intel Corp.
CAN 3 05-3028	Trotter-Vogel Realty, Inc. v. Intel Corp.
CAN 3 05-3094	Karol Juskiewicz v. Intel Corp.
CAN 3 05-3197	Athan Uwakwe v. Intel Corp.
CAN 3 05-3271	Jose Juan v. Intel Corp.
CAN 3 05-3272	Dressed to Kill Custom Draperies LLC v. Intel Corp.
CAN 3 05-3273	Tracy Kinder v. Intel Corp.
CAN 3 05-3277	Edward Rush v. Intel Corp.
CALIFORNIA SOUTHERN	
CAS 3 05-1507	Justin Suarez v. Intel Corp.
FLORIDA SOUTHERN	
FLS 1 05-22262	Nathaniel Schwartz v. Intel Corp.
KANSAS	
KS 6 05-1303	Marvin D. Chance, Jr. v. Intel Corp., et al. Opposed 12/21/05
TENNESSEE EASTERN	
TNE 2 05-212	Andrew Armbrister, et al. v. Intel Corp.
TENNESSEE WESTERN	
TNW 2 05-2605	Cory Wiles v. Intel Corp.

INVOLVED COUNSEL LIST (CTO-1)
DOCKET NO. 1717
IN RE INTEL CORP. MICROPROCESSOR ANTITRUST LITIGATION

Mario N. Alioto Trump, Alioto, Trump & Prescott 2280 Union Street San Francisco, CA 94123	Robert W. Coykendall Morris, Laing, Evans, Brock & Kennedy, Chld. Old Town Square 300 North Mead Suite 200 Wichita, KS 67202-2722	Jeffrey F. Keller Law Offices of Jeffrey F. Keller 425 Second Street Suite 500 San Francisco, CA 94107
Daniel B. Allanoff Meredith, Cohen, Greenfogel & Skirnick, P.C. 117 South 17th Street 22nd Floor Philadelphia, PA 19103	Donald F. Drummond Drummond & Associates One California Street Suite 300 San Francisco, CA 94111	Michael L. Kirby Post, Kirby, Noonan & Sweat 701 B Street Suite 1100 San Diego, CA 92101-3302
C. Donald Amangbo Amangbo & Associates, PLC 1940 Embarcadero Cove Oakland, CA 94606	Jef Feibelman Burch, Porter & Johnson, PLLC 130 N. Court Ave. Memphis, TN 38103	Jerry W. Laughlin Rogers, Laughlin, Nunnally, Hood & Crum 100 South Main Street Greenville, TN 37743
Scott Ames Serratore & Ames 9595 Wilshire Blvd. Suite 201 Los Angeles, CA 90212	Nancy L. Fineman Cotchett, Pitre, Simon & McCarthy San Francisco Airport Office Center Suite 200 840 Malcolm Road Burlingame, CA 94010	Michael P. Lehmann Furth Firm, LLP 225 Bush Street Suite 1500 San Francisco, CA 94104-4249
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David Mark Balabanian Bingham McCutchen LLP Three Embarcadero Center San Francisco, CA 94111-4067	Joy K. Fuyuno Bingham McCutchen LLP Three Embarcadero Center San Francisco, CA 94111-4067	Joseph M. Patane Law Offices of Joseph Patane 2280 Union Street San Francisco, CA 94123
Gordon Ball Ball & Scott 550 W. Main Avenue Bank of America Center Suite 750 Knoxville, TN 37902-2567	Harvey W. Gurland, Jr. Duane Morris 200 South Biscayne Blvd. Suite 3400 Miami, FL 33131	Donald L. Perelman Fine, Kaplan & Black, RPC 1835 Market Street 28th Floor Philadelphia, PA 19103
Steve W. Berman Hagens Berman Sobol Shapiro, LLP 1301 Fifth Avenue Suite 2900 Seattle, WA 98101	Lance A. Harke Harke & Clasby LLP 155 South Miami Avenue Suite 600 Miami, FL 33130	Juden Justice Reed Schubert & Reed, LLP Two Embarcadero Center, Suite 1050 San Francisco, CA 94111
David Boies Straus & Boies, LLP 4041 University Drive, 5 th Floor Fairfax, VA 22030	Christopher B. Hockett Bingham McCutchen LLP Three Embarcadero Center San Francisco, CA 94111-4067	Randy R. Renick Law Offices of Randy Renick 128 North Fair Oaks Ave. Suite 204 Pasadena, CA 91103
Craig C. Corbitt Zelle, Hofmann, Voelbel, Mason & Gette, LLP 44 Montgomery Street, Suite 3400 San Francisco, CA 94104		Richard A. Ripley Bingham McCutchen 1120 20th Street, N.W. Suite 800 Washington, DC 20036

INVOLVED COUNSEL LIST (CTO-1) MDL-1717

PAGE 2 OF 2

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Wexler Law Firm
One North LaSalle Street
Suite 2000
Chicago, IL 60602

**INVOLVED JUDGES LIST (CTO-1)
DOCKET NO. 1717
IN RE INTEL CORP. MICROPROCESSOR ANTITRUST LITIGATION**

Hon. J. Daniel Breen
U.S. District Judge
345 U.S. Courthouse
111 South Highland Avenue
Jackson, TN 38301

Hon. J. Ronnie Greer
U.S. District Judge
United States District Court
220 West Depot Street
Suite 405
Greeneville, TN 37743

~~Hon. J. Thomas Marten
U.S. District Judge
232 U.S. Courthouse
401 North Market St.
Wichita, KS 67202~~

Hon. Jose E. Martinez
U.S. District Judge
Federal Courthouse Square
Third Floor
301 North Miami Avenue
Miami, FL 33128

Hon. Marilyn Hall Patel
U.S. District Judge
Phillip Burton U.S. Courthouse
Box 36060
450 Golden Gate Avenue
San Francisco, CA 94102-3661

Hon. Thomas J. Whelan
U.S. District Judge
3155 Edward J. Schwartz U.S. Courthouse
940 Front Street, Suite 3155
San Diego, CA 92101

INVOLVED CLERKS LIST (CTO-1)
DOCKET NO. 1717
IN RE INTEL CORP. MICROPROCESSOR ANTITRUST LITIGATION

Clarence Maddox, Clerk
Federal Courthouse Square
301 North Miami Avenue
Miami, FL 33128-7788

Patricia L. McNutt, Clerk
U.S. Courthouse
101 Summer Street, West
Greenville, TN 37743

~~Ralph L. DeLoach, Clerk~~
~~204 U.S. Courthouse~~
~~401 N. Market Street~~
~~Wichita, KS 67202~~

Richard W. Wieking, Clerk
400-S Ronald V. Dellums
Federal Building
1301 Clay Street
Oakland, CA 94612-5212

Richard W. Wieking, Clerk
Phillip Burton U.S. Courthouse
Box 36060
450 Golden Gate Avenue
San Francisco, CA 94102-3489

Thomas M. Gould, Clerk
242 Clifford Davis Federal Building
167 North Main Street
Memphis, TN 38103

W. Samuel Hamrick, Jr., Clerk
4290 Edward J. Schwartz Federal Building
880 Front Street
San Diego, CA 92101-8900

UNITED STATES DISTRICT COURT
Northern District of California
450 Golden Gate Avenue
San Francisco, California 94102

www.cand.uscourts.gov

Richard W. Wicking
Clerk

General Court Number
415.522.2000

January 11, 2006

United States District Court
for the District of Delaware
Lockbox 18
844 North King Street
Boggs Federal Building
Wilmington, Delaware 19801

RE: **In Re Intel Corporation, Inc., Antitrust Litigation - MDL - 1717**

CV 05-2830 MHP	05-894 JJF (D/DE)
CV 05-2831 MHP	05-895 JJF (D/DE)
CV 05-2834 MHP	05-896 JJF (D/DE)
CV 05-2858 MHP	05-897 JJF (D/DE)
CV 05-2859 MHP	05-898 JJF (D/DE)
CV 05-2882 MHP	05-899 JJF (D/DE)
CV 05-2897 MHP	05-900 JJF (D/DE)
CV 05-2898 MHP	05-901 JJF (D/DE)
CV 05-2916 MHP	05-902 JJF (D/DE)
CV 05-2957 MHP	05-903 JJF (D/DE)
CV 05-3028 MHP	05-904 JJF (D/DE)
CV 05-3094 MHP	05-905 JJF (D/DE)
CV 05-3197 MHP	05-906 JJF (D/DE)
CV 05-3271 MHP	05-907 JJF (D/DE)
CV 05-3272 MHP	05-908 JJF (D/DE)
CV 05-3273 MHP	05-909 JJF (D/DE)
CV 05-3277 MHP	05-910 JJF (D/DE)

Dear Clerk,

Pursuant to an order transferring the above captioned cases to your court, transmitted herewith are:

- (✓) Certified copy of docket entries
- (✓) Certified copy of TRANSFERRAL ORDER
- (✓) Original case file documents
- (✓) Please be advised that the above entitled action was previously designated to the

Electronic Case Filing program. You can access electronically filed documents through PACER referencing the Northern District of California case number at <https://ecf.cand.uscourts.gov>

Please acknowledge receipt of the above documents on the attached copy of this letter.

Sincerely,
RICHARD W. WIEKING, Clerk

A handwritten signature in black ink, appearing to read "Gina Agustine". The signature is fluid and cursive, with the first name "Gina" being more prominent than the last name "Agustine".

by: Gina Agustine-Rivas
Case Systems Administrator

Enclosures
Copies to counsel of record